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**Supreme Court of the United States**

**OCTOBER TERM, 1963**

**No. 69**

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**LEVIN NOCK DAVIS, SECRETARY,  
STATE BOARD OF ELECTIONS, ET AL.,  
APPELLANTS,**

**vs.**

**HARRISON MANN, ET AL.**

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**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA**

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**FILED FEBRUARY 7, 1963**

**PROBABLE JURISDICTION NOTED JUNE 10, 1963**

# SUPREME COURT OF THE UNITED STATES

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[fol. 1]

[File endorsement omitted]

1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

Civil Action No. 2604

HARRISON MANN, KATHRYN STONE, JOHN C. WEBB, JOHN  
A. K. DONOVAN, Plaintiffs,

vs.

1. LEVIN NOCK DAVIS, Secretary, State Board of Elections,  
Accomac, Virginia;
2. ALEXANDER M. HARMAN, JR., Member, State Board of  
Elections, Pulaski, Virginia;
3. ROBERT C. BAYLISS, Member, State Board of Elections,  
Richmond, Virginia;
4. ALBERTIS HARRISON, Governor of Virginia, Richmond,  
Virginia;
5. ROBERT Y. BUTTON, Attorney General of Virginia,  
Richmond, Virginia;
6. H. BRUCE GREEN, Clerk of the Circuit Court,  
Arlington, Virginia;
7. THOMAS P. CHAPMAN, JR., Clerk of the Circuit Court,  
Fairfax, Virginia;
8. DENMAN T. RUCKER, Arlington, Virginia;
9. MAYNARD CARLISLE, Arlington, Virginia;
10. RALPH KIMBLE, Arlington, Virginia, Members of  
Electoral Board, Arlington County, Virginia;
11. PAUL KINCHELOE, Burke, Virginia;
12. EBNER R. DUNCAN, Alexandria, Virginia;
13. JONES JASPER, Fairfax Station, Virginia, Members of  
Electoral Board, Fairfax County, Virginia, Defendants.

[fol. 2]

**VOTERS' COMPLAINT TO CORRECT MALAPPORTIONMENT OF THE  
GENERAL ASSEMBLY OF THE COMMONWEALTH OF VIRGINIA—  
Filed April 9, 1962**

**I**

This Court has original jurisdiction of this action pursuant to 28 U.S. Code Section 1343(3) and the plaintiffs have a right to bring this suit pursuant to the Civil Rights Act of the United States, 42 U. S. Code Sections 1983, 1988.

**II**

Under the provisions of 28 U. S. Code Sections 2281 and 2284 special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state, whenever said application is based on the unconstitutionality of such statute.

**III**

Plaintiffs and each of them are citizens of the United States and of the Commonwealth of Virginia and are registered and qualified voters in said Commonwealth and are entitled to vote for the members of the General Assembly of the Commonwealth of Virginia. In particular:

A. Plaintiffs, Harrison Mann and Kathryn Stone are residents of the County of Arlington;

B. Plaintiffs John C. Webb and John A. K. Donovan are residents of the County of Fairfax.

Plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other voters similarly situated in the Commonwealth of Virginia.

[fol:3]

**IV**

The defendants and each of them are citizens of the United States and of the Commonwealth of Virginia and reside in said Commonwealth, and are sued in their representative capacities as hereinafter set forth.

A. Defendants Levin Nock Davis, Alexander M. Harman, Jr. and Robert C. Bayliss are Members of the State Board of Elections of the Commonwealth, the defendant Levin Nock Davis being secretary thereof. As such, said defendants are charged with supervising and coordinating the work of City and County Electoral Boards, making rules and regulations for the conduct of elections, preparing forms and records for the registration of voters and performing other duties in respect to elections.

B. Defendant Albertis Harrison is Governor and Chief Executive Officer of the Commonwealth, and under 28 U. S. Code Section 2284 must be notified of any action in a United States Court involving the enforcement of a state statute.

C. Defendant Robert Y. Button is Attorney General of the Commonwealth, and as such is charged with the duty of assisting attorneys for the Commonwealth of any jurisdiction in which election laws have been violated and of doing all things necessary to enforce the election laws. Under 28 U.S. Code Section 2284 said defendant, as Attorney General of the Commonwealth, must be notified of any action in a United States Court involving the enforcement of a state statute.

D. Defendant H. Bruce Green is Clerk of the Circuit Court of Arlington County and defendant Thomas P. Chapman, Jr. is Clerk of the Circuit Court of Fairfax County. They are sued as representatives of all of the County and City clerks of the Commonwealth, such persons constituting a class so numerous as to make it impracticable to bring [fol. 4] them all before the court. This action involves common questions of law and fact affecting the several rights of all of said clerks and a common relief is sought against them. The defendants H. Bruce Green and Thomas P. Chapman, Jr. and the other clerks of the Commonwealth are charged with the duty of making out certificates of election for the persons having the highest number of votes for any county or district office, including members of the General Assembly of the Commonwealth, and with the performance of other duties in connection with elections.

E. The defendants Denman T. Rucker, Maynard Carlisle and Ralph Kimble are the members of the Electoral Board of Arlington. The defendants Paul Kincheloe, Ebner L. Duncan and Jones Jasper are the members of the Electoral Board of Fairfax County. As such, said defendants are charged with the duty of the preparation of ballots and the conduct of elections in their respective counties, of canvassing the results thereof, and of other duties in connection therewith. They are sued as representatives of all of the members of county and city electoral boards in the Commonwealth, such persons constituting a class so numerous as to make it impracticable to bring them all before the Court. This action involves common questions of law and fact affecting the several rights of all of said clerks, and common relief is sought against them.

## V

Plaintiffs are now denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States. Plaintiffs bring this action on their own behalf and on behalf of all of the registered and qualified votes of their respective Counties and Cities, and on behalf of all voters in Virginia who are similarly situated. Plaintiffs seek a declaration of their rights [fol. 5] and a declaration of the validity or invalidity of the acts and statutes of the Commonwealth which apportion the members of the House of Delegates and Senators among the counties and cities of Virginia. They further seek such injunctive relief as may be proper to assure them and all other voters of Virginia the free and equal franchise and the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States and which rights are now being denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes and private acts, as hereinafter more particularly set forth.

## VI

Sections 41 through 43 inclusive of the Constitution of Virginia provide that the legislative power of the Commonwealth shall be vested in a General Assembly which

# HOUSE OF DELEGATES

1960 - Population 3,966,949 - 1960 Census

Number of Delegates - 100

Average Population per Delegate 39,669

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(1)	Accomack	30,635	30,635
(1)	Accomack Northampton (See also Accomack)	30,635 <u>16,966</u> (Floater)	47,601
(1)	Albemarle Greene	30,969 <u>4,715</u>	35,684
(1)	Charlottesville	29,427	29,427
(1)	Alexandria	91,023	91,023
(1)	Alleghany Covington Clifton Forge	12,128 11,062 <u>5,268</u>	28,458
(1)	Amelia Powhatan Nottoway	7,815 6,747 <u>15,141</u>	29,703
(1)	Amherst Lynchburg (See also Lynchburg & Nelson)	22,953 <u>54,790</u> (Floater)	77,743
(3)	Arlington	163,401	54,467
(2)	Augusta Highland Staunton Waynesboro	37,363 3,221 22,232 <u>15,694</u> 78,510	39,255
(1)	Bedford	31,028	31,028
(1)	Bland Giles	5,982 <u>17,219</u>	23,201
(1)	Botetourt Craig	16,715 <u>3,356</u>	20,071
(1)	Brunswick Lunenburg	17,779 <u>12,523</u>	30,302
(1)	Buchanan	36,724	36,724
(1)	Buchanan Dickenson (See also Buchanan)	36,724 <u>20,211</u> (Floater)	56,935
(1)	Buckingham Appomattox Cumberland	10,877 9,148 <u>6,360</u>	26,385

[fol. 16]

EXHIBIT "B" TO COMPLAINT

shall consist of a Senate and House of Delegates; that the Senate shall consist of not more than forty and not less than thirty-three members who shall be elected quadrennially by the voters of the several senatorial districts; that the House of Delegates shall consist of not more than one hundred and not less than ninety members who shall be elected biennially by the voters of the several House districts; and that a reapportionment of the Commonwealth into Senatorial and House districts shall be made in the year 1932 and every ten years thereafter.

## VII

Pursuant to said provisions of the Constitution of Virginia, the General Assembly in 1932, 1942 and in 1952 did apportion the state into separate Senatorial and House districts. In 1958 the 1952 apportionment act was amended.

[fol. 6]

## VIII

By Section 24-14 of the Code of Virginia, enacted in 1952, as amended in 1958, the Commonwealth is divided into thirty-six Senatorial districts, whose respective locations, number of Senators and 1960 populations are shown in Exhibit "A" annexed.

By Section 24-12 of the Code of Virginia, the Commonwealth is divided into seventy-four House districts, whose respective locations, number of delegates and 1960 populations are shown in Exhibit "B" annexed.

## IX

The apportionments set forth in Exhibit "A" and "B" hereto annexed are the ones now effective in the Commonwealth of Virginia. In the biennial session of the General Assembly of Virginia held in January, February and March of this year the General Assembly purported to enact amendments to Sections 24-14 and 24-12 respectively of the Code of Virginia, reapportioning the Senate and House districts. A list of the Senatorial districts, as thus purportedly re-apportioned by the General Assembly with their respective locations, populations and number of

Senators is set forth in Exhibit "C"; and a list of the House districts as thus purportedly re-apportioned by the General Assembly with their respective locations, populations and number of delegates is set forth in Exhibit "D". Said acts of the General Assembly will purport to become effective on June 28, 1962.

## X

Plaintiffs aver that the aforementioned acts of the General Assembly embodied in Code Sections 24-14 and 24-12 respectively as existing in 1952, as amended in 1958 and [fol. 7] 1962, and as presently existing, have resulted and will continue to result in invidious discrimination against the plaintiffs and all other voters of the State Senatorial and House districts in which plaintiffs reside and against the voters of many other Senatorial and House districts in the Commonwealth.

## XI

Plaintiffs, as citizens of the United States and as citizens and registered and qualified voters of the Commonwealth of Virginia, possess an inherent right to vote for members of the General Assembly of the Commonwealth and to cast votes that are equally effective with the votes of every other citizen of said Commonwealth; but plaintiffs aver that by virtue of the invidious discrimination practiced by the General Assembly in the re-apportionment statutes hereinbefore referred to the votes of the plaintiffs are not as effective as the votes of voters residing in other Senatorial and House districts of the Commonwealth. As an instance of such invidious discrimination the voters of Fairfax County, the City of Falls Church and the City of Fairfax are permitted to elect under the 1958 Act of the General Assembly above referred to only one Delegate for every 142,597 persons residing in their House district according to the 1960 census, while the voters of Loudoun County, immediately adjacent thereto, are permitted to elect one Delegate for 24,549 people, according to the census of 1960. By the purported amendment of Section 24-12 of

EXHIBIT "B"  
(continued)  
HOUSE OF DELEGATES

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(1)	Campbell	32,958	32,958
(1)	Caroline King George Essex King & Queen	12,725 7,243 6,690 <u>5,889</u>	32,547
(1)	Carroll Floyd	23,178 <u>10,462</u>	33,640
(1)	Charles City James City New Kent York Williamsburg	5,492 11,539 4,504 21,583 <u>6,832</u>	49,950
(1)	Charlotte Prince Edward	13,368 <u>14,121</u>	27,489
(1)	Chesterfield Colonial Heights	71,197 <u>9,587</u>	80,784
(1)	Chesterfield Henrico Colonial Heights (See also Chesterfield, etc.)	71,197 117,339 <u>9,587</u>	198,123
(1)	Clarke Frederick Winchester	7,942 21,941 <u>15,110</u>	44,993
(1)	Danville	46,577	46,577
(1)	Hampton	89,258	89,258
(2)	Fairfax Falls Church	275,002 <u>10,192</u>	142,597
(1)	Fauquier Rappahannock	24,066 <u>5,368</u>	29,434
(1)	Fluvanna Goochland Louisa	7,227 9,206 <u>12,959</u>	29,392
(1)	Franklin	25,925	25,925
(1)	Gloucester Mathews Middlesex	11,919 7,121 <u>6,319</u>	25,359
(1)	Grayson Galax	17,390 <u>5,254</u>	22,644
(1)	Greensville Sussex	16,155 <u>12,411</u>	28,566
(1)	Halifax South Boston	33,637 <u>5,974</u>	39,611

the Code of Virginia, enacted by the General Assembly in 1962, the voters of Fairfax County, Falls Church and Fairfax City were given one additional Delegate in the General Assembly, but under said Act they still have only one Delegate for every 95,058 persons residing in their [fol. 8] district while the voters of Loudoun County have one Delegate for 24,549 persons, the voters of Shenandoah County have one Delegate for 21,825 persons, and the voters of Wythe County have one Delegate for 21,975 persons. By the purported amendment of Section 24-14 of the Code of Virginia enacted by the General Assembly in 1962, the voters of the City of Norfolk have one Senator for every 152,936 persons while the voters of 3 other Cities and 12 Counties in the Commonwealth have a Senator for every 67,000 persons or less. The population growth in the areas of the Commonwealth in which plaintiffs reside is much more rapid than the population growth in all other sections of the Commonwealth, and with each passing year the discrimination against the plaintiffs and other voters in such areas will become more acute and invidious. A table showing the "Index Values" of the right to vote for members of the General Assembly of Virginia, by Counties, from 1910 through 1960 is annexed as Exhibit "E".

## XII

Plaintiffs aver that when all of the many inequalities in the above mentioned re-apportionment statutes are considered together, they result in a distortion of the constitutional system as established, defined and guaranteed by the Fourteenth Amendment to the Constitution of the United States, and that this distortion prevents the General Assembly of Virginia from being a body representative of the people of the Commonwealth, and denies to plaintiffs the equal protection of the laws. Plaintiffs further aver that as a result thereof, a minority of the people of Virginia now control and will continue to control the General Assembly of the Commonwealth contrary to the Constitution of Virginia and the Constitution of the United States; [fol. 9] and that said representatives of a minority of the people of this Commonwealth by virtue of their control of the General Assembly have used and are using the same to

oppress the citizens of the areas in which plaintiffs reside and other citizens similarly situated by inequitable distribution to their areas of state revenue derived by taxation of all of the people and in numerous other ways.

### XIII

Plaintiffs aver that the constitutional requirements aforementioned can only be met by a re-distribution of State Senatorial and House districts among the counties and cities of the Commonwealth substantially in proportion to their respective populations, and that because of the fact that detailed population figures are now available under the 1960 census such re-distribution of Senatorial and House districts may now be effectively made.

### XIV

The regular biennial session of the General Assembly of Virginia which was held in January, February and March, 1962, has now adjourned, and under the Constitution of Virginia, unless the General Assembly is called into special session, it will not reconvene until January, 1964. In the meantime, there will be elections throughout the Commonwealth for members of the State Senate and House of Delegates, and unless the inequities herein complained of are corrected by this Court, the plaintiffs and all other voters similarly situated will be denied the equal protection of the laws in said elections. The defendants, unless prevented by this Court will perform their duties in the conduct of such elections in an unconstitutional manner.

[fol. 10] Wherefore, plaintiffs pray:

1. That this Court may take jurisdiction of this controversy.

2. That a special three-judge court be called and impanelled to hear and determine this action and to declare the rights of plaintiffs in the premises to be as follows:

- A. That the present apportionment of Senate and House districts in the Commonwealth of Virginia denies the plaintiffs and other voters of the Common-

wealth similarly situated the equal protection of the laws, in contravention of the Fourteenth Amendment of the Constitution of the United States.

B. That Sections 24-12 and 24-14 of the Code of Virginia, as now in force, are unconstitutional and void.

C. That the purported amendments to Sections 24-12 and 24-14 of the Code of Virginia adopted by the General Assembly of the Commonwealth in its biennial session held in the calendar year 1962 are likewise unconstitutional and void:

3. That upon final hearing of this action, the Court grant to the plaintiffs the following further relief:

A. That the defendants and each of them be permanently restrained and enjoined from furnishing forms for nominations, from receiving nominations or petitions therefor, from conducting and certifying elections, and from taking any and all other steps with respect to the election of members of the Senate and [fol. 11] House of Delegates of the Commonwealth of Virginia under and pursuant to Sections 24-14 and 24-12 of the Code of Virginia.

B. That defendants be directed to declare and hold the next primaries and general election for members of the Senate and House of Delegates of the Commonwealth on an "at large" basis throughout the entire Commonwealth.


4. That plaintiffs may have such further and alternative relief as the nature of this action may require and this Court may deem proper.

Edmund D. Campbell, Southern Building, Arlington, Virginia;

E. A. Prichard, 106 N. Payne Street, Fairfax, Virginia, Attorneys for Plaintiff.

[fol. 12] *Duly sworn to by Harrison Mann, jurat omitted in printing.*

EXHIBIT "A" TO COMPLAINT

(See opposite) 

# STATE SENATORIAL DISTRICTS

1960 - Population 3,966,949 - 1960 Census

Number of Senators - 40

Average Population per Senator 99,174

<u>Senators</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Senator</u>
(1)	Accomack Northampton Princess Anne Virginia Beach	30,635 16,966 76,124 <u>8,091</u>	131,816
(2)	Norfolk City	305,872	152,936
(1)	Norfolk County South Norfolk	51,612 <u>22,035</u>	73,647
(1)	Halifax South Boston Charlotte Prince Edward	33,637 5,974 13,368 <u>14,121</u>	67,100
(1)	Isle of Wight Nansemond Southampton Suffolk	17,164 31,366 27,195 <u>12,609</u>	88,334
(1)	Greensville Hopewell Prince George Surry Sussex	16,155 17,895 20,270 6,220 <u>12,411</u>	72,951
(1)	Brunswick Lunenburg Mecklenburg	17,779 12,523 <u>31,428</u>	61,730
(1)	Dinwiddie Nottoway Petersburg	22,183 15,141 <u>36,750</u>	74,074
(1)	Arlington	163,401	163,401
(1)	Portsmouth	114,773	114,773
(1)	Appomattox Buckingham Cumberland Powhatan Amherst Nelson Amelia	9,148 10,877 6,360 6,747 22,953 12,752 <u>7,815</u>	76,652
(1)	Campbell Lynchburg	32,958 <u>54,790</u>	87,748
(2)	Danville Henry Martinsville Patrick Pittsylvania	48,577 40,335 18,798 15,282 <u>58,296</u>	89,644

[fol. 13]

EXHIBIT "A" TO COMPLAINT

EXHIBIT "A"  
(continued)  
STATE SENATORIAL DISTRICTS

2

<u>Senators</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Senator</u>
(1)	Carroll Floyd Grayson Galax	23,178 10,462 17,390 <u>5,254</u>	56,284
(1)	Bristol Smyth Washington	17,144 31,066 <u>38,076</u>	86,286
(1)	Lee Scott	25,824 <u>25,813</u>	51,637
(1)	Dickenson Wise Norton	20,211 43,579 <u>4,996</u>	68,786
(1)	Buchanan Russell Tazewell	36,724 26,290 <u>44,791</u>	107,805
(1)	Bland Giles Pulaski Wythe	5,982 17,219 27,258 <u>21,975</u>	72,434
(1)	Alleghany Bedford Botetourt Buena Vista Clifton Forge Covington Craig Rockbridge	12,128 31,028 16,715 6,300 5,268 11,062 3,356 <u>24,039</u>	109,896
(1)	Franklin Montgomery Radford Roanoke County	25,925 32,923 9,371 <u>61,693</u>	129,912
(1)	Augusta Bath Highland Staunton Waynesboro	37,363 5,335 3,221 22,232 <u>15,694</u>	83,845
(1)	Harrisonburg Page Rappahannock Rockingham Warren	11,916 15,572 5,368 40,485 <u>14,655</u>	87,996
(1)	Clarke Frederick Shenandoah Winchester	7,942 21,941 21,825 <u>15,110</u>	66,818

[fol. 14]

EXHIBIT "A"  
(continued)  
STATE SENATORIAL DISTRICTS

<u>Senators</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Senator</u>
(1)	Albemarle Charlottesville Fluvanna Greene Madison	30,969 29,427 7,227 4,715 <u>8,187</u>	80,525
(1)	Fredericksburg Goochland Louisa Orange Spotsylvania	13,639 9,206 12,959 12,900 <u>13,819</u>	62,523
(1)	Culpeper Fauquier Loudoun	15,088 24,066 <u>24,549</u>	63,703
(1)	Fairfax Falls Church	275,002 <u>10,192</u>	285,194
(1)	King George Lancaster Northumberland Prince William Richmond County Stafford Westmoreland	7,243 9,174 10,185 50,164 6,375 16,876 <u>11,042</u>	111,059
(1)	Caroline Hanover King William Essex King and Queen Middlesex	12,725 27,550 7,563 6,690 5,889 <u>6,319</u>	66,736
(1)	Gloucester Mathews Portion of Newport News former City of Warwick York James City New Kent Williamsburg	11,919 7,121 113,662 21,583 11,539 4,504 <u>6,832</u>	63,498
(1)	Hampton Portion Newport News former city of New- port News	89,258 <u>113,662</u>	202,920
(1)	Charles City Chesterfield Colonial Heights Henrico	5,492 71,197 9,587 <u>117,339</u>	203,615
(3)	Richmond City	219,958	73,319
(1)	Roanoke City	97,110	97,110
(1)	City of Alexandria	91,023	91,023

[fol. 15]

EXHIBIT "B"  
(continued)  
HOUSE OF DELEGATES

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(1)	Hanover King William	27,550 <u>7,563</u>	35,113
(1)	Henrico (See also Chesterfield, etc.)	117,339	117,339
(2)	Henry Patrick Martinsville	40,335 15,282 <u>18,798</u>	37,208
(1)	Isle of Wight Nansemond Suffolk (See also Nansemond)	17,164 31,366 <u>12,609</u> (Floater)	61,139
(1)	Northumberland Westmoreland Lancaster Richmond County	10,185 11,042 9,174 <u>6,375</u>	36,776
(3)	Consolidated City of Newport News	113,662	37,887
(1)	Lee	25,824	25,824
(1)	Loudoun	24,549	24,549
(1)	Lynchburg	54,790	54,790
(1)	Madison Culpeper Orange	8,187 15,088 <u>12,900</u>	36,175
(1)	Mecklenburg	31,428	31,428
(1)	Montgomery Radford	32,923 <u>9,371</u>	42,294
(1)	Nansemond Suffolk (See also Isle of Wight)	31,366 <u>12,609</u>	43,975
(1)	Nelson Amherst (See also Amherst)	12,752 <u>22,953</u>	35,705
(2)	Norfolk County South Norfolk	51,612 <u>22,035</u>	36,823
(6)	Norfolk City	305,872	50,978
(1)	Page Warren	15,572 <u>14,655</u>	30,227
(2)	Petersburg Dinwiddie	36,750 <u>22,183</u>	29,466

[fol. 18]

EXHIBIT "B"  
(continued)  
HOUSE OF DELEGATES

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(2)	Pittsylvania	58,296	29,148
(2)	Portsmouth	114,773	57,386
(1)	Prince George Surry Hopewell	20,270 6,220 <u>17,895</u>	44,385
(1)	Princess Anne Virginia Beach	76,124 <u>8,091</u>	84,215
(1)	Prince William Stafford	50,164 <u>16,876</u>	67,040
(1)	Pulaski	27,258	27,258
(7)	Richmond City	219,958	31,422
(1)	Roanoke County	61,693	61,693
(2)	Roanoke City	97,110	48,555
(1)	Rockbridge Bath Buena Vista	24,039 5,335 <u>6,300</u>	35,674
(2)	Rockingham Harrisonburg	40,485 <u>11,916</u>	26,200
(1)	Russell	26,290	26,290
(1)	Scott	25,813	25,813
(1)	Shenandoah	21,825	21,825
(1)	Smyth	31,066	31,066
(1)	Southampton	27,195	27,195
(1)	Spotsylvania Fredericksburg	13,819 <u>13,639</u>	27,458
(1)	Tazewell	44,791	44,791
(2)	Washington Bristol	38,076 <u>17,144</u>	27,610
(2)	Wise Norton	43,579 <u>4,996</u>	24,287
(1)	Wythe	21,975	21,975

[fol. 19]

# STATE SENATORIAL DISTRICTS - 1962 ACT

1960 - Population 3,966,949 - 1960 Census

Number of Senators - 40

Average Population per Senator 99,174

<u>Senators</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Senator</u>
(1)	Accomack	30,635	
	Northampton	16,966	
	Princess Anne	76,124	
	City of Virginia Beach	<u>8,091</u>	131,816
(2)	Norfolk City	305,872	152,936
(1)	Norfolk County	51,612	
	City of South Norfolk	<u>22,035</u>	73,647
(1)	Halifax	33,637	
	Charlotte	13,368	
	Prince Edward	14,121	
	City of South Boston	<u>5,974</u>	67,100
(1)	Isle of Wight	17,164	
	Nansemond	31,366	
	Southampton	19,931	
	City of Suffolk	12,609	
	City of Franklin	<u>7,264</u>	88,334
(1)	Greensville	16,155	
	Prince George	20,270	
	Surry	6,220	
	Sussex	12,411	
	Hopewell	<u>17,895</u>	72,951
(1)	Brunswick	17,779	
	Lunenburg	12,523	
	Mecklenburg	<u>31,428</u>	61,730
(1)	Dinwiddie	22,183	
	Nottoway	15,141	
	City of Petersburg	<u>36,750</u>	74,074
(1)	Arlington	163,401	163,401
(1)	City of Portsmouth	114,773	114,773
(1)	Appomattox	9,148	
	Buckingham	10,877	
	Cumberland	6,360	
	Powhatan	6,747	
	Amherst	22,953	
	Nelson	12,752	
	Amelia	<u>7,815</u>	76,652
(1)	Campbell	32,958	
	City of Lynchburg	<u>54,790</u>	87,748
(2)	Henry	40,335	
	Patrick	15,282	
	Pittsylvania	58,296	
	City of Danville	46,577	
	City of Martinsville	<u>18,798</u>	89,644

[fol. 20]

EXHIBIT "C" TO COMPLAINT

STATE SENATORIAL DISTRICTS - 1962 ACT

<u>Senators</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Senator</u>
(1)	Smyth Carroll Floyd Grayson City of Galax	31,066 23,178 10,462 17,390 <u>5,254</u>	87,350
(1)	Washington Lee Scott City of Bristol	38,076 25,824 25,813 <u>17,144</u>	106,857
(1)	Dickenson Wise City of Norton	20,211 43,579 <u>4,996</u>	68,786
(1)	Buchanan Russell Pasewell	36,724 26,290 <u>44,791</u>	107,805
(1)	Bland Giles Pulaski Wythe	5,982 17,219 27,258 <u>21,975</u>	72,434
(1)	Alleghany Bedford Botetourt Craig Rockbridge City of Buena Vista City of Clifton Forge City of Covington	12,128 31,028 16,715 3,356 24,039 6,300 5,268 <u>11,062</u>	109,896
(1)	Franklin Montgomery Roanoke City of Radford	25,925 32,923 61,693 <u>9,371</u>	129,912
(1)	Augusta Bath Highland City of Staunton City of Waynesboro	37,363 5,335 3,221 22,232 <u>15,694</u>	83,845
(1)	Page Rappahannock Rockingham Warren City of Harrisonburg	15,572 5,368 40,485 14,655 <u>11,916</u>	87,996
(1)	Clarke Frederick Shenandoah City of Winchester	7,942 21,941 21,825 <u>15,110</u>	66,818
(1)	Albemarle Fluvanna Greene Madison City of Charlottesville	30,969 7,227 4,715 8,187 <u>29,427</u>	80,525

[fol. 21]

EXHIBIT "C"  
(continued)  
STATE SENATORIAL DISTRICTS - 1962 ACT

<u>Senators</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Senator</u>
(1)	Goochland Louisa Orange Spottsylvania City of Fredericksburg	9,206 12,959 12,900 13,819 <u>13,639</u>	62,523
(1)	Culpepper Fauquier Loudoun	15,088 24,066 <u>24,549</u>	63,703
(2)	Fairfax City of Fairfax City of Falls Church	261,417 13,585 <u>10,192</u>	142,597
(1)	King George Lancaster Northumberland Prince William Richmond Stafford Westmoreland	7,243 9,174 10,185 50,164 6,375 16,876 <u>11,042</u>	111,059
(1)	Caroline Hanover King William Essex King and Queen Middlesex Gloucester Mathews	12,725 27,550 7,563 6,690 5,889 6,319 11,919 <u>7,121</u>	85,776
(1)	Consolidated City of Newport News York	113,662 <u>21,583</u>	135,245
(1)	City of Hampton	89,258	89,258
(1)	Charles City County Chesterfield James City County City of Colonial Heights City of Williamsburg New Kent	5,492 71,197 11,539 9,587 6,832 <u>4,504</u>	109,151
(2)	City of Richmond	219,958	109,979
(1)	County of Henrico	117,339	117,339
(1)	City of Roanoke	97,110	97,110
(1)	City of Alexandria	91,023	91,023

[fol. 22]

## HOUSE OF DELEGATES - 1962 ACT

1960 - Population 3,966,949 - 1960 Census

Number of Delegates - 100

Average Population per Delegate 39,669

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(1)	Accomack	30,635	30,635
(1)	Accomack Northampton (See also Accomack)	30,635 16,966 (Floater)	47,601
(1)	Albemarle Greene	30,969 <u>4,715</u>	35,684
(1)	Charlottesville	29,427	29,427
(2)	Alexandria	91,023	45,512
(1)	Alleghany City of Covington City of Clifton Forge	12,128 11,062 <u>5,268</u>	28,458
(1)	Amelia Powhatan Nottoway	7,815 6,747 <u>15,141</u>	29,703
(1)	Amherst City of Lynchburg (See also Lynchburg & Nelson)	22,953 54,790 (Floater)	77,743
(3)	Arlington	163,401	54,467
(2)	Augusta Highland City of Staunton City of Waynesboro	37,363 3,221 22,232 <u>15,694</u> 78,510	39,255
(1)	Bedford	31,028	31,028
(1)	Bland Giles	5,982 17,219	23,201
(1)	Botetourt Craig Roanoke County (See also Roanoke County)	16,715 3,356 61,693 (Floater)	81,764
(1)	Brunswick Lunenburg	17,779 <u>12,523</u>	30,302
(1)	Buchanan	36,724	36,724
(1)	Russell Dickenson	26,290 <u>20,211</u>	46,501
(1)	Buckingham Appomattox Cumberland	10,877 9,148 <u>6,360</u>	26,385

[fol. 23]

EXHIBIT "D" TO COMPLAINT

EXHIBIT "D"  
(continued)  
HOUSE OF DELEGATES - 1962 ACT

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(1)	Campbell	32,958	32,958
(1)	Caroline	12,725	
	King George	7,243	
	Essex	6,690	
	King and Queen	<u>5,889</u>	32,547
(1)	Carroll	23,178	
	Floyd	<u>10,462</u>	33,640
(1)	Charles City County	5,492	
	James City County	11,539	
	New Kent	4,504	
	York	21,583	
	City of Williamsburg	<u>6,832</u>	49,950
(1)	Charlotte	13,368	
	Prince Edward	<u>14,121</u>	27,489
(1)	Chesterfield	71,197	
	City of Colonial Heights	<u>9,587</u>	80,784
(1)	Clarke	7,942	
	Frederick	21,941	
	City of Winchester	<u>15,110</u>	44,993
(1)	City of Danville	46,577	46,577
(1)	City of Hampton	89,258	89,258
(3)	Fairfax County	261,417	
	City of Fairfax	13,585	
	City of Falls Church	<u>10,192</u>	
		285,194	95,031
(1)	Fauquier	24,066	
	Rappahannock	<u>5,368</u>	29,434
(1)	Fluvanna	7,227	
	Goochland	9,206	
	Louisa	<u>12,959</u>	29,392
(1)	Franklin	25,925	25,925
(1)	Gloucester	11,919	
	Mathews	7,121	
	Middlesex	<u>6,319</u>	25,359
(1)	Grayson	17,390	
	City of Galax	<u>5,254</u>	22,644
(1)	Greensville	16,155	
	Sussex	<u>12,411</u>	28,566
(1)	Halifax	33,637	
	City of South Boston	<u>5,974</u>	39,611
(1)	Hanover	27,550	
		<u>7,563</u>	35,113

[fol. 24]

EXHIBIT "D"  
(continued)  
HOUSE OF DELEGATES - 1962 ACT

3

<u>Delegates</u>	<u>District</u>	<u>Population by District</u>	<u>Population per Delegate</u>
(1)	Henrico (See also City of Richmond)	117,339	117,339
(2)	Henry Patrick City of Martinsville	40,335 15,282 <u>18,798</u>	37,208
(1)	Isle of Wight Nansemond City of Suffolk (See also Nansemond, etc.)	17,164 31,366 <u>12,609</u> (Floater)	61,139
(1)	Northumberland Westmoreland Lancaster Richmond County	10,185 11,042 9,174 <u>6,375</u>	36,776
(3)	City of Newport News	113,662	37,887
(2)	Lee Wise City of Norton	25,824 43,579 <u>5,013</u> 74,416	37,203
(1)	Loudoun	24,549	24,549
(1)	City of Lynchburg (See also Amherst)	54,790	54,790
(1)	Madison Culpeper Orange	8,187 15,088 <u>12,900</u>	36,175
(1)	Mecklenburg	31,428	31,428
(1)	Montgomery City of Radford	32,923 <u>9,371</u>	42,294
(1)	Nansemond City of Suffolk (See also Isle of Wight, etc.)	31,366 <u>12,609</u>	43,975
(1)	Nelson Amherst (See also Amherst & Lynchburg)	12,752 <u>22,953</u>	35,705
(2)	Norfolk County City of South Norfolk	51,612 <u>22,035</u> 73,647	36,823
(6)	City of Norfolk	305,872	50,978
(1)	Page Warren	15,572 <u>14,655</u>	30,227
(2)	City of Petersburg Dinwiddie	36,750 <u>22,183</u> 58,933	29,466

[fol. 25]

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EXHIBIT "D"  
(continued)  
HOUSE OF DELEGATES - 1962 ACT

<u>Delegates</u>	<u>District</u>	<u>Population by Districts</u>	<u>Population per Delegate</u>
(2)	Pittsylvania	58,296	29,148
(2)	City of Portsmouth	114,773	57,386
(1)	Prince George Surry City of Hopewell	20,270 6,220 <u>17,895</u>	44,385
(2)	Princess Anne City of Virginia Beach	76,124 8,091 <u>84,215</u>	42,107
(1)	Prince William	50,164	50,164
(1)	Pulaski	27,258	27,258
(8)	City of Richmond Henrico	219,958 <u>117,339</u> (Floater) 337,297	42,162
(1)	Roanoke County (See also Botetourt, etc.)	61,693	61,693
(2)	City of Roanoke	97,110	48,555
(1)	Rockbridge Bath City of Buena Vista	24,039 5,335 <u>6,300</u>	35,674
(2)	Rockingham City of Harrisonburg	40,485 <u>11,916</u> 52,401	26,200
(1)	Shenandoah	21,825	21,825
(1)	Smyth	31,066	31,066
(1)	Southampton City of Franklin	19,931 <u>7,264</u>	27,195
(1)	Spotsylvania Stafford City of Fredericksburg	13,819 16,876 <u>13,639</u>	44,334
(1)	Tazewell	44,791	44,791
(2)	Washington Scott City of Bristol	38,076 25,813 <u>17,144</u> 81,033	40,516
(1)	Wythe	21,975	21,975

[fol. 26]

[fol. 27]

EXHIBIT "F" TO COMPLAINT

27

Index Values of the Right to Vote  
for Members of the Legislature,  
by Counties, 1910, 1930, 1950, 1960

STATE OF VIRGINIA

County		Lower House				Upper House				Entire Legislature			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Accomack	31	.95	1.12	1.63	2.12	.79	.86	.89	.75	.87	.99	1.26	1.44
Albemarle	31	1.13	1.00	1.06	1.11	1.18	.94	1.14	1.23	1.16	.97	1.10	1.17
Alleghany	12	.84	.90	1.15	1.39	1.05	1.12	.78	.90	.95	1.01	.97	1.15
Amelia	8	.93	1.02	1.15	1.34	.88	1.03	1.09	1.29	.91	1.03	1.12	1.32
Amherst	23	1.09	1.27	1.45	1.62	1.44	1.71	1.09	1.29	1.27	1.49	1.27	1.46
Appomattox	9	2.32	1.12	1.17	1.50	1.07	1.34	1.09	1.29	1.70	1.23	1.13	1.40
Arlington	163	.81	.91	.74	.73	.89	.67	.61	.61	.85	.79	.68	.67
Augusta	37	.96	.97	.94	1.01	1.07	1.11	1.08	1.18	1.02	1.04	1.01	1.10
Bath	5	.57	.64	.95	1.11	1.05	1.12	1.08	1.18	.81	.88	1.02	1.15
Bedford	31	1.40	1.21	1.12	1.28	.96	1.12	.78	.90	1.18	1.17	.95	1.09
Bland	6	1.23	1.29	1.31	1.71	.95	1.01	1.08	1.37	1.09	1.15	1.20	1.54
Botetourt	17	1.16	1.27	1.73	1.98	1.05	1.12	.78	.90	1.11	1.20	1.26	1.44
Brunswick	18	1.07	1.18	.97	1.31	1.07	1.14	1.22	1.61	1.07	1.16	1.10	1.46
Buchanan	37	.55	.57	1.49	1.78	.74	.81	.75	.92	.65	.69	1.12	1.35
Buckingham	11	.84	1.12	1.17	1.50	1.07	1.34	1.09	1.29	.96	1.23	1.13	1.40
Campbell	33	.89	1.06	1.15	1.20	.98	.95	1.08	1.13	.94	1.01	1.12	1.17
Caroline	13	1.24	1.18	1.04	1.22	1.22	1.26	1.35	1.49	1.23	1.22	1.20	1.36
Carroll	23	.98	1.09	.87	1.18	.89	1.44	1.40	1.76	.94	1.27	1.14	1.47
Charles City	5	.69	.97	.99	.79	1.30	.83	.76	.49	1.00	.91	.88	.64
Charlotte	13	1.31	1.51	1.13	1.44	1.07	1.34	1.17	1.48	1.19	1.43	1.15	1.46

[fol. 28]

## EXHIBIT "E"

Index Values of the Right to Vote  
for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960

## STATE OF VIRGINIA

County		Lower House				Upper House				Entire Legislature			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Chesterfield	71	1.72	.75	1.04	.69	1.41	.83	.76	.49	1.57	.79	.90	.59
Clarke	8	1.28	.78	.86	.88	1.71	1.16	1.39	1.48	1.50	.97	1.13	1.18
Craig	3	.84	1.27	1.73	1.98	1.05	1.12	.78	.90	.95	1.20	1.26	1.44
Culpeper	15	1.53	1.15	.97	1.10	1.14	1.12	1.49	1.56	1.34	1.14	1.23	1.3
Cumberland	6	.84	1.10	1.17	1.50	.88	1.34	1.09	1.29	.86	1.22	1.13	1.40
Dickenson	20	.48	.36	.56	.70	.74	.90	1.04	1.44	.61	.63	.80	1.07
Dinwiddie	22	1.34	1.31	1.23	1.35	1.30	1.29	1.20	1.34	1.32	1.30	1.22	1.35
Essex	7	1.10	1.11	1.04	1.22	1.05	1.25	1.35	1.49	1.08	1.18	1.20	1.36
Fairfax	275	1.00	.96	.63	.28	.89	.67	.78	.35	.95	.81	.71	.32
Fauquier	24	1.39	1.15	1.21	1.35	1.18	1.12	1.49	1.56	1.27	1.14	1.35	1.46
Floyd	10	1.46	.37	.87	1.18	1.27	.73	1.40	1.76	1.37	.55	1.14	1.47
Fluvanna	7	1.17	1.57	1.15	1.35	1.07	.94	1.14	1.23	1.12	1.26	1.15	1.29
Franklin	26	.78	1.36	1.35	1.53	1.27	.73	.79	.76	1.03	1.00	1.07	1.15
Frederick	22	1.11	.78	.86	.88	1.30	1.16	1.39	1.48	1.21	.97	1.13	1.18
Giles	17	1.23	1.29	1.31	1.71	.95	1.01	1.08	1.37	1.09	1.15	1.20	1.54
Gloucester	12	1.65	1.28	1.37	1.56	1.05	1.25	.96	.74	1.35	1.27	1.17	1.15
Goochland	9	1.17	1.57	1.15	1.35	1.41	1.26	1.42	1.59	1.29	1.42	1.29	1.47
Grayson	17	1.04	1.21	1.55	1.75	.89	1.44	1.40	1.76	.97	1.33	1.48	1.76
Greene	5	1.21	1.00	1.06	1.11	1.18	.94	1.14	1.23	1.20	.97	1.10	1.12
Greensville	16	.81	.95	1.14	1.39	1.20	1.12	1.27	1.36	1.01	1.04	1.21	1.38

[fol. 29]

EXHIBIT "E"  
Index Values of the Right to Vote  
for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960

STATE OF VIRGINIA

County		Lower House				Upper House				Entire Legislature			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Halifax	34	1.03	1.17	.80	1.00	1.29	1.47	1.17	1.48	1.16	1.32	.99	1.24
Hanover	28	2.00	.97	1.12	1.13	1.22	1.26	1.35	1.49	1.61	1.12	1.24	1.31
Henrico	117	.88	.80	.90	.54	1.30	.83	.76	.49	1.09	.82	.83	.52
Henry	40	1.12	.87	1.04	1.07	.58	.95	1.00	1.11	.85	.91	1.02	1.09
Highland	3	.57	.64	.94	1.01	1.07	1.11	1.08	1.18	.82	.88	1.01	1.10
Isle of Wight	17	1.38	1.81	.63	.65	.76	.83	1.05	1.12	1.07	1.32	.84	.89
James City	12	.69	.99	.99	.79	1.30	.83	.96	.74	1.00	.91	.98	.77
King and Queen	6	1.10	1.11	1.04	1.22	1.05	1.25	1.35	1.49	1.08	1.18	1.20	1.36
King George	7	1.43	1.18	1.04	1.22	1.18	1.49	1.09	.89	1.31	1.34	1.07	1.06
King William	8	.80	.97	1.12	1.13	1.22	1.26	1.35	1.49	1.01	1.12	1.24	1.31
Lancaster	9	1.20	1.54	.95	1.08	1.18	1.49	1.09	.89	1.19	1.52	1.02	.99
Lee	26	.92	.80	.92	1.54	.63	1.11	1.30	1.92	.78	.96	1.11	1.73
Loudoun	25	1.38	1.22	1.57	1.62	1.18	1.12	1.49	1.56	1.28	1.17	1.53	1.59
Louisa	13	1.24	1.69	1.15	1.35	1.27	1.18	1.42	1.59	1.26	1.44	1.29	1.47
Lunenburg	13	1.61	1.72	.97	1.31	.88	1.03	1.22	1.61	1.25	1.38	1.10	1.46
Madison	8	1.21	1.15	.97	1.10	1.14	.94	1.14	1.23	1.18	1.05	1.06	1.17
Mathews	7	1.16	1.28	1.37	1.56	1.05	1.25	.96	.74	1.11	1.27	1.17	1.15
Mecklenburg	31	.71	.74	.99	1.26	1.07	1.14	1.22	1.61	.89	.94	1.11	1.44
Middlesex	6	1.16	1.11	1.37	1.56	1.05	1.25	1.35	1.49	1.11	1.18	1.36	1.53
Montgomery	33	.96	.94	.86	.94	.68	.73	.79	.76	.82	.84	.83	.85

[fol. 30]

**EXHIBIT "E"**  
**Index Values of the Right to Vote**  
**for Members of the Legislature**  
**by Counties, 1910, 1930, 1950, 1960**

**STATE OF VIRGINIA**

County		Lower House				Upper House				Entire Legislature			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Nansemond	31	.77	.74	1.51	1.56	.76	.83	1.05	1.12	.77	.79	1.28	1.34
Nelson	13	1.23	1.48	.97	1.11	1.44	1.71	1.09	1.29	1.34	1.60	1.03	1.20
New Kent	5	.69	.99	.99	.79	1.30	.83	.96	.74	1.00	.91	.98	.77
Norfolk	52	.78	1.28	.60	1.08	.60	.72	.75	1.35	.69	1.00	.68	1.22
Northampton	17	.39	.45	.65	.83	.79	.86	.89	.75	.59	.66	.77	.79
Northumberland	10	1.03	1.24	.95	1.08	1.18	1.49	1.09	.89	1.11	1.37	1.02	.99
Nottoway	15	.93	1.02	1.15	1.34	.88	1.03	1.20	1.34	.91	1.03	1.18	1.34
Orange	13	1.53	1.15	.97	1.10	1.14	1.18	1.42	1.59	1.34	1.17	1.20	1.35
Page	16	.93	1.04	1.11	1.31	1.71	.89	1.01	1.13	1.32	.97	1.06	1.22
Patrick	15	1.20	1.53	1.04	1.07	.89	.95	1.00	1.11	1.05	1.24	1.02	1.09
Pittsylvania	58	.89	.79	1.00	1.36	1.34	.95	1.00	1.11	1.12	.87	1.00	1.24
Powhatan	7	.75	.75	1.15	1.34	1.41	1.03	1.09	1.29	1.08	.89	1.12	1.32
Prince Edward	14	1.45	1.10	1.13	1.44	.88	1.03	1.17	1.48	1.17	1.07	1.15	1.46
Prince George	20	1.17	.84	.92	.89	1.20	1.12	1.27	1.36	1.19	.98	1.10	1.13
Prince William	50	1.71	1.10	.96	.59	.89	.67	1.09	.89	1.30	.89	1.03	.74
Princess Anne	76	1.79	1.49	.78	.47	.79	.86	.89	.75	1.29	1.18	.84	.61
Pulaski	27	1.20	1.18	1.20	1.46	.95	1.01	1.08	1.37	1.08	1.10	1.14	1.42
Rappahannock	5	.93	1.15	1.21	1.35	1.14	.89	1.01	1.13	1.04	1.02	1.11	1.24
Richmond	6	1.20	1.54	.95	1.08	1.18	1.49	1.09	.89	1.19	1.52	1.02	.99
Roanoke	62	1.05	.69	.80	.64	.68	.73	.79	.76	.87	.71	.80	.70

EXHIBIT "E"  
Index Values of the Right to Vote  
for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960

STATE OF VIRGINIA

County		Lower House				Upper House				Entire Legislature			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Rockbridge	24	1.41	1.61	.95	1.11	.96	1.12	.78	.90	1.19	1.37	.87	1.01
Reckingham	40	1.18	1.31	1.45	1.51	1.48	.89	1.01	1.13	1.33	1.10	1.23	1.32
Russell	26	.88	1.50	1.24	1.51	.74	.81	.75	.92	.81	1.16	1.00	1.22
Scott	26	.87	1.00	1.20	1.54	.63	1.11	1.30	1.92	.75	1.06	1.25	1.73
Shenandoah	22	.98	1.17	1.57	1.82	1.30	1.16	1.39	1.48	1.14	1.17	1.48	1.65
Smyth	31	1.01	.96	1.10	1.28	.87	.89	.99	1.15	.94	.93	1.05	1.22
Southampton	27	.78	.90	1.25	1.46	.76	.83	1.05	1.12	.77	.87	1.15	1.29
Spotsylvania	14	1.30	1.44	1.38	1.44	1.27	1.18	1.42	1.59	1.29	1.31	1.40	1.52
Stafford	17	1.43	1.10	.96	.59	1.27	1.18	1.09	.89	1.35	1.14	1.03	.74
Surry	6	1.17	.84	.92	.89	1.20	1.12	1.27	1.36	1.19	.98	1.10	1.13
Sussex	12	.81	.95	1.14	1.39	1.20	1.12	1.27	1.36	1.01	1.04	1.21	1.38
Tazewell	45	.55	.75	.70	.89	.74	.81	.75	.97	.65	.78	.73	.91
Warren	15	1.28	1.04	1.11	1.31	1.71	.89	1.01	1.13	1.50	.97	1.06	1.22
Washington	38	1.06	1.13	1.24	1.44	.87	.89	.99	1.15	.97	1.01	1.12	1.30
Westmoreland	11	1.03	1.24	.95	1.08	1.18	1.49	1.09	.89	1.11	1.37	1.02	.99
Wise	44	.48	.83	1.18	1.63	.63	.90	1.04	1.44	.56	.87	1.11	1.54
Wythe	22	1.01	1.17	1.42	1.81	.95	1.01	1.08	1.37	.98	1.09	1.25	1.59
York	22	.69	.99	.99	.79	.93	1.25	.96	.74	.81	1.12	.98	.77

[fol. 32]

**EXHIBIT "E"**  
**Index Values of the Right to Vote**  
**for Members of the Legislature**  
**by Cities, 1910, 1930, 1950, 1960**

**STATE OF VIRGINIA**

City		Lower House				Upper House				Entire Legislature			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Alexandria	91	.81	1.00	.54	.44	.89	.67	1.34	1.09	.85	.84	.94	.77
Bristol	17	1.06	1.13	1.24	1.44	.87	.89	.99	1.15	.97	1.01	1.12	1.30
Buena Vista	6	1.40	1.63	.95	1.11	.96	1.12	.78	.90	1.18	1.38	.87	1.01
Charlottesville	29	1.13	1.00	1.28	1.35	1.18	.94	1.14	1.23	1.16	.97	1.21	1.29
Clifton Forge	5	.84	.90	1.15	1.39	1.05	1.12	.78	.90	.95	1.01	.97	1.15
Colonial Hgts.	6	-	-	1.04	.70	-	-	.76	.49	-	-	.90	.60
Covington	11	-	-	-	1.39	-	-	-	.90	-	-	-	1.15
Danville	47	.89	1.09	.95	.85	1.33	.95	1.00	1.11	1.11	1.02	.98	.98
Falls Church	10	-	-	.63	.28	-	-	.78	.35	-	-	.71	.32
Fredericksburg	14	1.30	1.44	1.38	1.44	1.27	1.18	1.42	1.59	1.29	1.31	1.40	1.52
Galax	5	-	-	-	1.75	-	-	-	1.76	-	-	-	1.76
Hampton	89	.97	.92	.54	.44	.93	.87	.80	.74	.95	.90	.67	.60
Harrisonburg	12	-	1.31	1.45	1.51	-	.89	1.01	1.13	-	1.10	1.23	1.32
Hopewell	18	-	.84	.92	.89	-	1.12	1.27	1.36	-	.98	1.10	1.13
Lynchburg	55	.70	.60	1.18	1.23	.98	.95	1.08	1.13	.84	.78	1.13	1.18
Martinsville	19	-	.87	1.04	1.07	-	.95	1.00	1.11	-	.91	1.02	1.09
Newport News	114	1.02	1.27	1.21	1.05	.93	.87	.88	.74	.98	1.07	1.05	.90
Norfolk	306	.61	.75	.93	.78	.76	.93	.78	.65	.69	.84	.86	.72
Norton	5	-	-	-	1.63	-	-	-	1.44	-	-	-	1.54
Petersburg	37	.85	.85	1.23	1.35	1.30	1.29	1.20	1.34	1.08	1.07	1.22	1.35

**EXHIBIT "E"**  
**Index Values of the Right to Vote**  
**for Members of the Legislature**  
**by Cities, 1910, 1930, 1950, 1960**

**STATE OF VIRGINIA**

City		Lower House				Upper House				Entire Legislation			
Name	1960 Pop. (Thous.)	1910	1930	1950	1960	1910	1930	1950	1960	1910	1930	1950	1960
Portsmouth	115	.62	1.06	.83	.69	.60	.72	1.04	.86	.61	.89	.94	.78
Radford	9	.96	.94	.86	.94	.68	.73	.79	.76	.82	.84	.83	.85
Richmond	220	.81	.79	1.01	1.26	.81	.99	1.08	1.35	.81	.89	1.05	1.31
Roanoke	97	.59	.70	.72	.82	.68	.73	.90	1.02	.64	.72	.81	.92
South Boston	6	-	-	-	1.00	-	-	-	1.48	-	-	-	1.24
South Norfolk	22	-	1.28	.60	1.08	-	.72	.75	1.35	-	1.00	.68	1.22
Staunton	22	.96	.97	.94	1.01	1.07	1.11	1.08	1.18	1.02	1.04	1.01	1.10
Suffolk	13	-	.74	1.44	1.54	-	.83	1.05	1.12	-	.79	1.25	1.33
Virginia Beach	8	-	-	-	.47	-	-	-	.75	-	-	-	.61
Waynesboro	16	-	-	.94	1.01	-	-	1.08	1.18	-	-	1.01	1.10
Williamsburg	7	.69	.99	.99	.79	1.30	.83	.96	.74	1.00	.91	.98	.77
Winchester	15	1.11	.78	.86	.88	1.30	1.16	1.39	1.48	1.21	.97	1.13	1.18

[fol. 83]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
Civil Action No. 2604

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HARRISON MANN, KATHRYN STONE, JOHN C. WEBB, JOHN  
A. K. DONOVAN, Plaintiffs,

CHARLES L. GLANVILLE, WILLIAM L. SHEPHEARD, PAUL M.  
LIPKIN, JACK R. WILKINS, Plaintiffs Intervening,

—versus—

1. LEVIN NOCK DAVIS, Secretary, State Board of Elections,  
Accomac, Virginia;
2. ALEXANDER M. HARMAN, JR., Member, State Board of  
Elections, Pulaski, Virginia;
3. ROBERT C. BAYLISS, Member, State Board of Elections,  
Richmond, Virginia;
4. ALBERTIS HARRISON, Governor of Virginia, Richmond,  
Virginia;
5. ROBERT Y. BUTTON, Attorney General of Virginia,  
Richmond, Virginia;
6. H. BRUCE GREEN, Clerk of the Circuit Court, Arlington,  
Virginia;
7. THOMAS P. CHAPMAN, JR., Clerk of the Circuit Court,  
Fairfax, Virginia;
8. DENMAN T. RUCKER, Arlington, Virginia;
9. MAYNARD CARLISLE, Arlington, Virginia;
10. RALPH KIMBLE, Arlington, Virginia, Members of Elec-  
toral Board, Arlington County, Virginia, Defendants;
11. PAUL KINCHELOE, Burge, Virginia;
12. EBNE L. DUNCAN, Alexandria, Virginia;

13. JONES JASPER, Fairfax Station, Virginia, Members of Electoral Board, Fairfax County, Virginia;
14. WILLIAM L. PRIEUR, JR., Clerk of Corporation Court of City of Norfolk, Virginia;
15. JAMES M. WOLCOTT, Member, Electoral Board of City of Norfolk, Virginia;
16. JOSEPH T. FITZPATRICK, Member, Electoral Board of City of Norfolk, Virginia;
17. JAMES E. BAYLOR, Member, Electoral Board of City of Norfolk, Virginia, Additional Defendants Intervened against.

[fol. 84]

VOTERS' INTERVENING PETITION IN VOTERS' COMPLAINT TO CORRECT MALAPPORTIONMENT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF VIRGINIA—Filed May 25, 1962

### I.

Charles L. Glanville, William L. Shepherd, Paul M. Lipkin and Jack R. Wilkins, move for leave to intervene as plaintiffs in this action in order to assert their claims under the Complaint and the Motions heretofore filed by the captioned plaintiffs. They incorporate herein, by reference, all of the allegations of the original complaint together with attached exhibits, as if the same were set forth at length herein.

### II.

Charles L. Glanville, William L. Shepherd, Paul M. Lipkin and Jack R. Wilkins, assert that they are now and have been since the institution of this suit, residents, citizens and taxpayers of the City of Norfolk, Virginia, and of the United States of America and the Commonwealth of Virginia.

### III.

Intervenors are registered and qualified voters of the United States of America, the Commonwealth of Virginia,

and the City of Norfolk, Virginia, and are entitled to vote in the elections held by each of these governmental bodies.

#### IV.

Intervenors are members of the class represented by the original plaintiffs in this case; but due to the fact that intervenors are citizens of a municipality separate and apart from those of the plaintiffs, the representation of the intervenors' interests by the plaintiffs in this suit is or may be incomplete or inadequate and the intervenors are or may be bound by a judgment in this action.

[fol. 85]

#### V.

Intervenors move for leave to proceed against the original defendants and to join as additional defendants William L. Prieur, Jr., Clerk, Corporation Court of the City of Norfolk, Virginia; James M. Wolcott, Member of the Electoral Board of the City of Norfolk, Virginia; Joseph T. Fitzpatrick, Member of the Electoral Board of the City of Norfolk, Virginia; and James E. Baylor, Member of the Electoral Board of the City of Norfolk, Virginia.

#### VI.

This Court has original jurisdiction of this action pursuant to 28 U. S. Code Section 1343 (3) and the intervenors have a right to bring this suit pursuant to the Civil Rights Act of the United States, 42 U. S. Code Sections 1983, 1988.

#### VII.

Under the provisions of 28 U. S. Code Sections 2281 and 2284 special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state, whenever said application is based on the unconstitutionality of such statute.

#### VIII.

Intervenors and each of them are citizens of the United States and of the Commonwealth of Virginia and are regis-

tered and qualified voters in said Commonwealth and are entitled to vote for the members of the General Assembly of the Commonwealth of Virginia. In particular:

Intervenors Charles L. Glanville, William L. Shephard, Paul M. Lipkin and Jack R. Wilkins are residents of the City of Norfolk, Virginia.

Intervenors jointly and severally intervene in this action on their own behalf and on behalf of all other voters similarly situated in the Commonwealth of Virginia.

[fol: 86]

## IX.

The defendants and each of them are citizens of the United States and of the Commonwealth of Virginia and reside in said Commonwealth, and are sued in their representative capacities as hereinafter set forth.

A. Defendants Levin Nock Davis, Alexander M. Harman, Jr., and Robert C. Bayliss are Members of the State Board of Elections of the Commonwealth, the defendant, Levin Nock Davis, being secretary thereof. As such, said defendants are charged with supervising and coordinating the work of City and County Electoral Boards, making rules and regulations for the conduct of elections, preparing forms and records for the registration of voters and performing other duties in respect to elections.

B. Defendant Albertis Harrison is Governor and Chief Executive Officer of the Commonwealth, and under 28 U. S. Code Section 2284 must be notified of any action in a United States Court involving the enforcement of a state statute.

C. Defendant Robert Y. Button is Attorney General of the Commonwealth, and as such is charged with the duty of assisting attorneys for the Commonwealth of any jurisdiction in which election laws have been violated and of doing all things necessary to enforce the election laws. Under 28 U. S. Code Section 2284 said defendant, as Attorney General of the Commonwealth, must be notified of any action in a United States Court involving the enforcement of a state statute.

D. Defendant William L. Prieur, Jr., is Clerk of the Corporation Court of the City of Norfolk, Virginia. He is

sued as representative of all of the County and City Clerks of the Commonwealth, such persons constituting a class so numerous as to make it impracticable to bring them all before the Court. This action involves common questions [fol. 87] of law and fact affecting the several rights of all of said Clerks and a common relief is sought against them. The defendant, William L. Prieur, Jr., and the other Clerks of the Commonwealth are charged with the duty of making out certificates of election for the persons having the highest number of votes for any county or district office, including members of the General Assembly of the Commonwealth, and with the performance of other duties in connection with elections.

E. The defendants, James M. Wolcott, Joseph T. Fitzpatrick and James E. Baylor are Members of the Electoral Board of the City of Norfolk, Virginia. As such, said defendants are charged with the duty of the preparation of ballots and the conduct of elections in the City of Norfolk, Virginia, of canvassing the results thereof, and of other duties in connection therewith. They are sued as representative of all of the members of County and City Electoral Boards in the Commonwealth, such persons constituting a class so numerous as to make it impracticable to bring them all before the Court. This action involves common questions of law and fact affecting the several rights of all of said Members of Electoral Boards and common relief is sought against them.

## X.

Intervenors are now denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States. Intervenors intervene in this action on their own behalf and on behalf of all of the registered and qualified voters of the City of Norfolk, Virginia, and on behalf of all voters in Virginia who are similarly situated. Intervenors seek a declaration of their rights and a declaration of the validity or invalidity of the acts and statute of the Commonwealth which apportion the members of the House of Delegates and Senators among the counties and cities of Virginia. They further seek such

injunctive relief as may be proper to assure them and all [fol. 88] other voters of Virginia the free and equal franchise and the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States and which rights are now being denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes and private acts, as hereinafter more particularly set forth.

## XI.

Sections 41 through 43, inclusive, of the Constitution of Virginia provide that the legislative power of the Commonwealth shall be vested in a General Assembly which shall consist of a Senate and House of Delegates; that the Senate shall consist of not more than forty and not less than thirty-three members who shall be elected quadrennially by the voters of the several senatorial districts; that the House of Delegates shall consist of not more than one hundred and not less than ninety members who shall be elected biennially by the voters of the several House districts; and that a reapportionment of the Commonwealth into Senatorial and House districts shall be made in the year 1932 and every ten years thereafter.

## XII.

Pursuant to said provisions of the Constitution of Virginia, the General Assembly in 1932, 1942 and in 1952 did apportion the state into separate Senatorial and House districts. In 1958 the 1952 apportionment act was amended.

## XIII.

By Section 24-14 of the Code of Virginia, enacted in 1952, as amended in 1958, the Commonwealth is divided into thirty-six Senatorial districts, whose respective locations, number of Senators and 1960 populations are shown in Exhibit "A" annexed to original complaint.

By Section 24-12 of the Code of Virginia, the Commonwealth is divided into seventy-four House districts, whose respective locations, number of delegates and 1960

populations are shown in Exhibit "B" annexed to original complaint.

#### XIV.

The apportionment set forth in Exhibits "A" and "B" annexed to original complaint are the ones now effective in the Commonwealth of Virginia. In the biennial session of the General Assembly of Virginia held in January, February and March of this year the General Assembly purported to enact amendments to Sections 24-14 and 24-12 respectively of the Code of Virginia, reapportioning the Senate and House districts. A list of the Senatorial districts, as thus purportedly reapportioned by the General Assembly with their respective locations, populations and number of Senators is set forth in Exhibit "C" annexed to original complaint; and a list of the House districts as thus purportedly reapportioned by the General Assembly with their respective locations, populations and number of delegates is set forth in Exhibit "D" annexed to original complaint. Said acts of the General Assembly will purport to become effective on June 28, 1962.

#### XV.

Intervenors aver that the aforementioned acts of the General Assembly embodied in Code Sections 24-14 and 24-12, respectively, as existing in 1952, as amended in 1958 and 1962, and as presently existing, have resulted and will continue to result in invidious discrimination against the intervenors and all other voters of the state Senatorial and House districts in which intervenors reside and against the voters of many other Senatorial and House districts in the Commonwealth.

#### XVI.

Intervenors, as citizens of the United States and as citizens and registered and qualified voters of the Commonwealth of Virginia, possess an inherent right to vote for members of the General Assembly of the Commonwealth and to cast votes that are equally effective with the votes of every other citizen of said Commonwealth; but intervenors aver that by virtue of the invidious discrimina-

tion practiced by the General Assembly in this reapportionment statutes hereinbefore referred to, the votes of the intervenors are not as effective as the votes of other voters residing in other Senatorial and House districts of the Commonwealth. As an example of the unconstitutional effects of the discriminatory dilution of the weight of a voter's ballot in the City of Norfolk, as effected by the amendment of Section 24-12 of the Code of Virginia enacted by the General Assembly in 1962, each state Senator from the City of Norfolk represents 152,936 residents of the City of Norfolk, while less than half that number of persons residing in the City of South Norfolk, Virginia, and Norfolk County, Virginia, are afforded equal representation in the state senate. Each Delegate to the House of Delegates from the City of Norfolk represents 50,978 residents, while it takes only 36,823 persons residing in Norfolk County and the City of South Norfolk to entitle these localities to the same representation in the House of Delegates. The unconstitutional discrimination against the equal weight of the ballot afforded the citizens of Norfolk, Virginia, by the disproportionate provisions of said amendment is demonstrated and documented by the fact that the voters of Loudoun County have one Delegate for 24,549 persons; the voters of Shenandoah County have one Delegate for 21,825 persons; and the voters of Wythe County have one Delegate for 21,975 persons; and the voters of three other cities and 12 counties in the Commonwealth have a Senator for every 67,000 persons or less. The population growth in the City of Norfolk, in which intervenors reside, is much more rapid than in the favored sections of the Commonwealth referred to above, so that with each passing year the discrimination [fol. 91] against intervenors and other voters in the City of Norfolk will become more acute and invidious. A table showing the "Index Value" of the right to vote for members of the General Assembly of Virginia, by Counties, from 1910 through 1960 is annexed as Exhibit "E", annexed to original complaint.

#### XVII.

That the intervenors as citizens of the United States and of the State of Virginia possess the inherent right to vote

for members of the Virginia General Assembly and to cast votes that are equally effective with the votes of every other citizen of said state and the said rights are recognized and guaranteed by the Constitution of the United States and, if not, should be protected by the Constitutional Laws of the State of Virginia.

### XVIII.

That the General Assembly of Virginia for a number of years has denied to intervenors and others similarly situated the equal protection of the laws by unjustly discriminating against large segments of the population of the state and specifically the citizens of Norfolk, Virginia, in the allocation of the burdens of taxation and in the unequal and unjust disposition of funds derived by the state through the exercise of its taxing power as represented by statutes passed to raise and distribute revenues, notably for the support of public schools of the state, for teachers salaries, for the maintenance of roads and highways, welfare contributions and for other purposes.

Intervenors further aver that as a result of such malapportionment a minority of the people of Virginia now control and will continue to control the General Assembly of the Commonwealth contrary to the constitution of Virginia and the constitution of the United States and that said representatives of a minority of the people of this Commonwealth, by virtue of their control of the General Assembly have used and are using the same to oppress the [fol. 92] citizens of the City of Norfolk, in which intervenors reside, and other citizens similarly situated, by inequitable distribution to their area of state revenues derived by taxation of all of the people, and in numerous other ways.

### XIX.

Intervenors aver that the constitutional requirements aforementioned can only be met by a redistribution of state Senatorial and House districts among the counties and cities of the Commonwealth substantially in proportion to their respective populations; and that because detailed popula-

tion figures are now available under the 1960 census, such redistribution of Senatorial and House districts may now be effectively made.

## XX.

The regular biennial session of the General Assembly of Virginia which was held in January, February and March, 1962, has now adjourned, and under the Constitution of Virginia, unless the General Assembly is called into special session, it will not reconvene until January 1964. In the meantime, there will be elections throughout the Commonwealth for members of the state Senate and House of Delegates, and unless the inequities herein complained of are corrected by this Court, the intervenors and all other voters similarly situated will be denied the equal protection of the laws in said elections. The defendants, unless prevented by this Court will perform their duties in the conduct of such elections in an unconstitutional manner.

## XXI.

The Constitution and laws of the State of Virginia do not require the Virginia General Assembly to reapportion representation to which the City of Norfolk and other political sub-divisions of the state are entitled but once every ten years. If this Honorable Court does not grant the relief [fol. 93] herein sought and thereby afford relief to said intervenors and others similarly situated whereby they may obtain fair and equal representation in the Virginia General Assembly; the said intervenors and others similarly situated will suffer irreparable damage and harm in that they will be unequally and unjustly represented for the next ten years.

Wherefore, intervenors pray:

(1) That they may be permitted to intervene as parties plaintiff in this action;

(2) That William L. Prieur, Jr., James M. Wolcott, Joseph T. Fitzpatrick, and James E. Baylor, be named as additional parties defendant to this action;

(3) That process according to law may issue to the named defendants to this action, as well as to William L. Prieur, Jr., James M. Wolcott, Joseph T. Fitzpatrick and James E. Baylor.

(4) That this Court may take jurisdiction of this controversy.

(5) That a special three-judge court be called and impaneled to hear and determine this action and to declare the rights of intervenors in the premises to be as follows:

(A) That the present apportionment of Senate and House Districts in the Commonwealth of Virginia denies the intervenors and other voters of the Commonwealth similarly situated the equal protection of the laws, in contravention of the Fourteenth Amendment of the Constitution of the United States.

(B) That Sections 24-12 and 24-14 of the Code of Virginia, as now in force, are unconstitutional and void.

(C) That the purported amendments to Sections 24-12 and 24-14 of the Code of Virginia adopted by the General [fol. 94] Assembly of the Commonwealth in its biennial session held in the calendar year 1962 are likewise unconstitutional and void.

(6) That upon final hearing of this action, the Court grant to the intervenors the following further relief;

(A) That the defendants and each of them be permanently restrained and enjoined from furnishing forms for nominations, from receiving nominations or petitions therefor, from conducting and certifying elections, and from taking any and all other steps with respect to the election of members of the Senate and House of Delegates of the Commonwealth of Virginia under and pursuant to Sections 24-14 and 24-12 of the Code of Virginia.

(B) That defendants be directed to declare and hold the next primaries and general election for members of the Senate and House of Delegates of the Commonwealth on an "at large" basis throughout the entire Commonwealth.

(7) That intervenors may have such further and alternative relief as the nature of this action may require and this Court may deem proper.

Charles L. Glanville, William L. Shephard, Paul M. Lipkin and Jack R. Wilkins, By: Sidney H. Kelsey, Their Attorney.

Sidney H. Kelsey, 1408 Maritime Tower, Norfolk, Virginia;

Henry E. Howell, Jr., 808 Maritime Tower, Norfolk, Virginia;

Leonard B. Sachs, Citizens Bank Building, Norfolk, Virginia, Of Counsel for Intervenors.

[fol. 95] *Duly sworn to by Charles L. Glanville, William L. Shephard, Paul M. Lipkin, et al., jurats omitted in printing.*

[fol. 113] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

Civil Action No. 2604

[Title omitted]

ANSWER TO ORIGINAL COMPLAINT—Filed June 15, 1962

Come Now the defendants, H. Bruce Green, Clerk of the Circuit Court of Arlington County, Virginia, Denman T. Rucker, Maynard Carlisle and Ralph Kimble, Members of the Electoral Board of Arlington County, Virginia, by counsel, and for answer to the complaint heretofore filed against them in this case, say as follows:

1. These defendants deny the allegations of Paragraph 1.
2. These defendants admit the allegations of Paragraph 2.

3. These defendants admit the allegations of Paragraph 3, except the last paragraph thereof and for answer to said paragraph, these defendants say that they are without sufficient knowledge to admit or deny the same and therefore, deny the same and call for strict proof thereof.

4. These defendants admit the allegations of sub-paragraph A of Paragraph 4; these defendants admit the allegations of sub-paragraph B of Paragraph 4; these defendants admit the allegations of sub-paragraph C of Paragraph 4; these defendants admit that the persons named therein are the clerks of the respective courts mentioned therein and that as part of their duties they are charged with the duty of making out certificates of election as alleged, but these defendants deny the remainder of the allegations of sub-paragraph D of Paragraph 4.

[fol. 114] These defendants admit that the persons named therein are the members of the respective electoral boards as alleged and that among their duties are the duties of preparation of the ballots and the conduct of elections as alleged. These defendants deny the remainder of the allegations of sub-paragraph E of Paragraph 4.

5. These defendants being without sufficient information to form a belief as to the truth of all of the allegations contained in Paragraph 5 therefore deny the same and call for strict proof thereof.

6. These defendants admit the allegations of Paragraph 6.

7. These defendants admit the allegations of Paragraph 7.

8. These defendants admit the allegations of Paragraph 8.

9. These defendants admit the allegations of Paragraph 9.

10. These defendants, being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 10, therefore deny the same and call for strict proof thereof.

11. These defendants, being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 11, therefore deny the same and call for strict proof thereof.

12. These defendants, being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 12, therefore deny the same and call for strict proof thereof.

13. These defendants, being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 13, therefore deny the same and call for strict proof thereof.

14. These defendants, being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 14, therefore deny the same and call for strict proof thereof.

Wherefore, having fully answered, these defendants pray to be dismissed with their costs.

H. Bruce Green, Denman T. Rucker, Maynard Carlisle, Ralph Kimble, By William J. Hassan, Counsel.

[fol. 115] Certificate of Service (omitted in printing).

[fol. 116] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Civil Action No. 2604

[Title omitted]

ANSWER TO INTERVENORS' COMPLAINT—Filed June 15, 1962

Now comes, William L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, Virginia, and James M.

Wolcott, Joseph T. Fitzpatrick and James E. Baylor, members of the electoral board of the City of Norfolk, Virginia, and for Answer to the Intervening Petition, insomuch as it affects them, answers and says:

1. Complaint failed to state a claim upon which relief can be granted as against these Defendants.

[fol. 117] And for further answer, William L. Prieur, Jr. admits that he is Clerk of the Corporation Court of the City of Norfolk, Virginia, and insofar as he participates in his duties relative to elections in the City of Norfolk, Virginia, same is done in accordance with the laws of the State of Virginia, made and provided.

And for further answer, James M. Wolcott, Joseph T. Fitzpatrick and James E. Baylor, members of the Electoral Board of the City of Norfolk, Virginia, admit that they are members and their elections are governed by the Statute made and provided for the State of Virginia. They deny that they canvass votes in the City of Norfolk, Virginia, and ask for strict proof thereof.

And having fully answered the Complaint, they ask that same be dismissed.

William L. Prieur, Jr., Clerk of Corporation Court  
of City of Norfolk, Virginia.

James M. Wolcott, Joseph T. Fitzpatrick, James  
E. Baylor, Members of the Electoral Board of the  
City of Norfolk, Virginia, By: Alfred W. Whit-  
hurst, Counsel.

Certificate of Service (omitted in printing).

[fol. 118]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
Civil Action No. 2604

[Title omitted]

ANSWER TO INTERVENORS' COMPLAINT—Filed June 15, 1962

Come Now the defendants, H. Bruce Green, Clerk of the Circuit Court of Arlington County, Virginia, Denman T. Rucker, Maynard Carlisle and Ralph Kimble, Members of the Electoral Board of Arlington County, Virginia, by counsel, and for answer to the intervening petition filed against them in this case, say as follows:

1. Paragraph 1 requires no answer.
2. Your defendants being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 2 of the intervening petition therefore deny the same and call for strict proof thereof.
3. Your defendants being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 3 of the intervening petition, therefore deny the same and call for strict proof thereof.
4. Your defendants being without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 4 of the intervening petition, therefore deny the same and call for strict proof thereof.
5. Paragraph 5 requires no answer.
6. For answer to Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, these defendants adopt the answer heretofore filed by them to the original complaint filed in this case.

Wherefore, having fully answered, these defendants pray to be dismissed with their costs.

H. Bruce Green, Denman T. Rucker, Maynard Carlisle, Ralph Kimble, By William J. Hassan, Counsel.

[fol. 119] Certificate of Service (omitted in printing).

[fol. 123] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Civil Action No. 2604

[Title omitted]

ANSWER TO COMPLAINT—Filed June 15, 1962

Now come Levin Nock Davis, Secretary of the State Board of Elections of the Commonwealth of Virginia, Alexander M. Harman, Jr., and Robert C. Bayliss, Members of the State Board of Elections of the Commonwealth of Virginia, A. S. Harrison, Jr., Governor of Virginia, and Robert Y. Button, Attorney General of Virginia, and file their joint and several answer to the complaint herein and say:

1. The allegations of Paragraph I of the complaint are denied.

2. For answer to Paragraph II of the complaint, these defendants say that the provisions of 28 U.S.C.A. 2281 and 2284 speak for themselves and that no answer to said paragraph is required of these defendants.

3. The allegations of Paragraph III, (A) and (B) are admitted, but these defendants deny that plaintiffs may bring this action on their own behalf or on behalf of all other voters similarly situated in the Commonwealth of Virginia.

4. The allegations of Paragraph IV, (A) and (B) are admitted.

These defendants admit that Robert Y. Button is the [fol. 124] Attorney General of Virginia and is required to

be notified as alleged in (C) of said complaint; but these defendants deny that the said Robert Y. Button is charged with the duties as therein alleged.

These defendants admit that H. Bruce Green is Clerk of the Circuit Court of Arlington County, that Thomas P. Chapman, Jr. is Clerk of the Circuit Court of Fairfax County and that they are charged with the duty of making out certificates of election for persons having the highest number of votes for any county or district office and with the performance of other duties in connection with elections. The remaining allegations of (D) are denied.

These defendants admit that Denman T. Rucker, Maynard Carlisle and Ralph Kimble are members of the Electoral Board of Arlington County, that Paul Kincheloe, Ebner L. Duncan and Jones Jasper are members of the Electoral Board of Fairfax County and that they are charged with the duty of preparing ballots used in elections. The remaining allegations of (E) of the complaint are denied.

5. For answer to Paragraph V of the complaint, these defendants admit that plaintiffs seek a declaration of their rights and of the validity or invalidity of the statutes of Virginia which apportion members of the House of Delegates and the Senate of Virginia among the counties and cities of the Commonwealth. The remaining allegations of said Paragraph V of the complaint are denied.

6. For answer to Paragraph VI of the complaint, these defendants say that the provisions of Sections 41 through 43, inclusive, of the Constitution of Virginia speak for themselves and that no answer to said Paragraph VI is required of these defendants.

7. The allegations of Paragraph VII of the complaint are admitted.

8. For answer to Paragraph VIII, these defendants say that the provisions of Sections 24-14 and 24-12 of the Code [fol. 125] of Virginia speak for themselves. These defendants neither admit nor deny the accuracy of the matters set forth in Exhibits "A" and "B" annexed to the complaint and call for strict proof of the same.

9. For answer to Paragraph IX of the complaint, these defendants say that the General Assembly of Virginia, at its regular session of 1962, amended Sections 24-14 and 24-12 of the Virginia Code, which amendments will become effective on June 29, 1962. These defendants neither admit nor deny the remaining allegations of said Paragraph IX, including the accuracy of the matters set forth in Exhibits "C" and "D" annexed to the complaint and call for strict proof of the same.

10. The allegations of Paragraph X of the complaint are denied.

11. The allegations of the first sentence of Paragraph XI of the complaint are denied. These defendants neither admit nor deny the remaining allegations of Paragraph XI of the complaint, including the accuracy of the matters set forth in Exhibit "E" annexed to the complaint and call for strict proof of the same.

12. The allegations of Paragraph XII of the complaint are denied.

13. The allegations of Paragraph XIII of the complaint are denied.

14. For answer to Paragraph XIV of the complaint, these defendants say that the 1962 regular session of the General Assembly of Virginia has been adjourned, that the General Assembly of Virginia will not reconvene until January, 1964, unless a special session is called, and that there will be elections throughout the Commonwealth of Virginia for members of the House of Delegates and Senate of Virginia prior to January, 1964. The remaining allegations of Paragraph XIV of the complaint are denied.

Now having fully answered, these defendants pray to be hence dismissed with their costs in this behalf expended.

Levin Nock Davis, Secretary, State Board of Elections;

Alexander M. Harman, Jr., Robert C. Bayliss, Members, State Board of Elections;

A. S. Harrision, Jr., Governor of Virginia;  
 Robert Y. Button, Attorney General of Virginia;  
 By: Robert Y. Button, Of Counsel.

Robert Y. Button, Attorney General of Virginia.  
 R. D. Mellwaine, III, Assistant Attorney General.  
 Supreme Court—State Library Building, Richmond 19,  
 Virginia.

Certificates of Service (omitted in printing).

[fol. 133]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 Civil Action No. 2604

[Title omitted]

ANSWER TO INTERVENORS' COMPLAINT—Filed June 15, 1962

Now come Levin Nock Davis, Secretary of the State Board of Elections of the Commonwealth of Virginia, Alexander M. Harman, Jr., and Robert C. Bayliss, Members of the State Board of Elections of the Commonwealth of Virginia, A. S. Harrison, Jr., Governor of Virginia, and Robert Y. Button, Attorney General of Virginia, and file their joint and several answer to the intervening petition herein and say:

1. The allegations of Paragraph I of the intervening petition require no answer.
2. These defendants neither admit nor deny the allegations of Paragraphs II, III and IV of the intervening petition and call for strict proof of the same.
3. The allegations of Paragraph V of the intervening petition require no answer.
4. The allegations of Paragraph VI of the intervening petition are denied.

5. For answer to Paragraph VII of the intervening petition, these defendants say that the provisions of 28 USCA 2281 and 2284 speak for themselves and that no answer to said paragraph is required of these defendants.

[fol. 134] 6. These defendants neither admit nor deny the allegations of Paragraph VIII of the intervening petition and call for strict proof of the same.

7. The allegations of Paragraph IX, (A) and (B), of the intervening petition are admitted.

These defendants admit that Robert Y. Button is the Attorney General of Virginia and is required to be notified, as alleged in (C) of said intervening petition, but these defendants deny that the said Robert Y. Button is charged with the duties as therein alleged.

These defendants admit that W. L. Prieur, Jr., is Clerk of the Corporation Court of the City of Norfolk, and that he is charged with the duty of making out certificates of election for persons having the highest number of votes for any county or district office, and with the performance of other duties in connection with elections. The remaining allegations of (D) are denied.

These defendants admit that James M. Wolcott, Joseph T. Fitzpatrick and James E. Baylor are members of the Electoral Board of the City of Norfolk and that they are charged with the duty of preparing ballots used in elections. The remaining allegations of (E) of the intervening petition are denied.

8. For answer to Paragraph X of the intervening petition, these defendants admit that intervenors seek a declaration of their rights and of the validity or invalidity of the statutes of Virginia which apportion members of the House of Delegates and the Senate of Virginia among the counties and cities of the Commonwealth. The remaining allegations of said Paragraph X of the intervening petition are denied.

9. For answer to Paragraph XI of the intervening petition, these defendants say that the provisions of Sections 41 to 43, inclusive, of the Constitution of Virginia speak for

[fol. 135] themselves and that no answer to said Paragraph XI is required of these defendants.

10. The allegations of Paragraph XII of the intervening petition are admitted.

11. For answer to Paragraph XIII of the intervening petition, these defendants say that the provisions of Sections 24-14 and 24-12 of the Virginia Code speak for themselves. These defendants neither admit nor deny the accuracy of the matters set forth in Exhibits "A" and "B" annexed to the original complaint, and call for strict proof of the same.

12. For answer to Paragraph XIV of the intervening petition, these defendants say that the General Assembly of Virginia at its regular session of 1962 amended Sections 24-14 and 24-12 of the Virginia Code, which enactments will become effective on June 29, 1962. These defendants neither admit nor deny the remaining allegations of said Paragraph XIV, including the accuracy of the matters set forth in Exhibits "C" and "D" annexed to the original complaint, and call for strict proof of the same.

13. The allegations of Paragraph XV of the intervening petition are denied.

14. The allegations of the first sentence of Paragraph XVI of the intervening petition are denied. These defendants neither admit nor deny the remaining allegations of said Paragraph XVI of the intervening petition, including the accuracy of the matters set forth in Exhibit "E" annexed to the original complaint, and call for strict proof of the same.

15. The allegations of Paragraph XVII of the intervening petition are denied.

16. The allegations of Paragraph XVIII of the intervening petition are denied.

17. The allegations of Paragraph XIX of the intervening petition are denied.

[fol. 136] 18. For answer to Paragraph XX of the intervening petition, these defendants say that the 1962 regular session of the General Assembly of Virginia has been adjourned, that the General Assembly will not reconvene until January, 1964, unless a special session is called, and that elections will be held throughout the Commonwealth for members of the House of Delegates and Senate of Virginia prior to January, 1964. The remaining allegations of said Paragraph XX of the intervening petition are denied.

19. The allegations of the first sentence of Paragraph XXI of the intervening petition are admitted. The remaining allegations of said Paragraph XXI of the intervening petition are denied.

Now, having fully answered, these defendants pray to be hence dismissed, with their costs in this behalf expended.

Levin Nock Davis, Secretary, State Board of Elections;

Alexander M. Harman, Jr., Robert C. Bayliss, Members, State Board of Elections;

A. S. Harrison, Jr., Governor of Virginia;

Robert Y. Button, Attorney General of Virginia;

By: Robert Y. Button, Of Counsel.

Robert Y. Button, Attorney General of Virginia.

R. D. McIlwaine, III, Assistant Attorney General.

Supreme Court—State Library Building, Richmond 19, Virginia.

[fol. 137] Certificates of Service (omitted in printing).

[fol. 138]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION  
 Civil Action No. 2604

[Title omitted]

MOTION OF PLAINTIFFS AND INTERVENOR PLAINTIFFS FOR  
 LEAVE TO AMEND PRAYERS OF COMPLAINT—Filed June 20,  
 1962

The plaintiffs and intervenor plaintiffs move the Court for leave to amend the prayers of the complaint in this action by adding thereto an additional prayer number 3C, to read as follows:

3C. That in the alternative and unless the General Assembly of the Commonwealth promptly and fairly reapportions said Senate and House districts, this Court shall reapportion said district itself so as to give to plaintiffs and intervenor plaintiffs, and others similarly situated, fair and proportionate representation in the Senate and House Delegates of the Commonwealth.

As grounds for the foregoing motion it is averred that the proposed amendment to the complaint is necessary in order to give to plaintiffs, intervenor plaintiffs, and others similarly situated, adequate relief and the equal protection of the laws to which they are entitled under the [fol. 139] Fourteenth Amendment of the Constitution of the United States.

Edmund D. Campbell, E. A. Prichard, Attorneys  
 for Plaintiffs.

Sidney H. Kelsey, Henry E. Howell, Jr., Leonard  
 B. Sachs, Attorneys for Intervenor Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 170]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Civil Action No. 2604

[Title omitted]

ANSWER TO COMPLAINT—Filed October 24, 1962

Comes Now the defendants Thomas P. Chapman, Paul Kincheloe, Jones Jasper and Ebner R. Duncan and file their joint and several answer to the complaint herein and say:

1. That they adopt by reference those statements contained in the Answer filed heretofore on behalf of the defendants Levin Nock Davis, Alexander M. Harmann, Jr., A. S. Harrison, Jr. and Robert Y. Button by the office of the Attorney General of the Commonwealth of Virginia applicable to their position as co-defendants and rely thereon for their answer to said complaint of plaintiffs.

2. That they adopt by reference all exhibits and briefs filed in this cause by the office of the Attorney General of The Commonwealth of Virginia as their own and as fully as if set forth herein.

Now having fully answered, these defendants pray to be hence dismissed with their costs in this behalf expended.

Thomas P. Chapman, Clerk;

Paul Kincheloe, Ebner R. Duncan and Jones Jasper,  
Members, Electoral Board, Fairfax, Virginia;

By Robert C. Fitzgerald, Commonwealth Attorney  
for Fairfax County, Virginia;

By Quin S. Elson, Asst. Commonwealth Attorney  
for Fairfax County, Virginia.

Robert C. Fitzgerald, Commonwealth's Attorney, Fairfax County, Virginia.

Certificate of Service (omitted in printing).

[fol. 171]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
At Alexandria

Civil Action No. 2604

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HARRISON MANN et al., Plaintiffs,

v.

LEVIN NOCK DAVIS et al., Defendants.

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Argued October 22-23, 1962.

Before: Bryan, Circuit Judge, and Hoffman and Lewis,  
District Judges.

Edmund D. Campbell, Esquire, Arlington, Virginia, and  
E. A. Prichard, Esquire, Fairfax, Virginia, attorneys for  
the plaintiffs;

Henry E. Howell, Jr., Esquire, Sidney H. Kelsey, Es-  
quire and Leonard B. Sacks, Esquire, all of Norfolk, Vir-  
ginia, attorneys for the plaintiff-intervenors;

Robert Y. Button, Esquire, Attorney General of Virginia,  
R. D. Mellwaine, III, Esquire, Assistant Attorney Gen-  
eral of Virginia, David J. Mays, Esquire, and Henry T.  
Wickham, Esquire, all of Richmond, Virginia, attorneys for  
the defendants.

[fol. 172]

OPINION—Decided November 28, 1962

ALBERT V. BRYAN, Circuit Judge:

Virginia's legislative apportionment statutes\* of 1962  
are here assailed as violative of the Equal Protection Clause

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\* Chap. 635, 1962 Acts of Assembly, p. 1266, entitled "An Act to  
amend and reenact §24-14, as amended, of the Code of Virginia,  
relating to State senatorial districts", and Chap. 638, p. 1269,

of the Federal Constitution's Fourteenth Amendment. Plaintiffs (including intervenors) are registered and otherwise qualified voters of the State of Virginia residing, respectively, in Arlington County, Fairfax County and the City of Norfolk. Their complaint is that the apportionment reduces the value of a vote in these districts far below that of a vote in many other Senatorial and House districts of Virginia. The charge, we hold, has been proved.

The civil rights statutes, 42 U.S.C. §§ 1983 and 1988, are pleaded as authorizing the action; jurisdiction is rested on 28 U.S.C. § 1343(3): Alleging they sue on behalf of all other voters similarly situated in the Commonwealth of Virginia, as well as for themselves, plaintiffs name as defendants the members of the State Board of Elections and local election officials, together with the Governor and the Attorney General of Virginia.

The relief sought is: (1) a judgment voiding the apportionment acts, (2) injunctive restraint of the defendants from conducting elections under these laws, and (3) an apportionment by the Court if the General Assembly fail, after the decree of injunction, to reapportion the State in conformity with legal standards.

[fol. 173] I. Defendants move on several grounds to dismiss the complaint. However, *Baker v. Carr*, 369 U.S. 186 (1962) unequivocally declares, contrary to the first assertion of the motion, that allegations comparable to those now before us state a claim upon which the relief here prayed may be granted. Nor is dismissal justified on the further ground that the plaintiffs have an appropriate remedy in the Virginia courts, for the "exceptional circumstances" are not here for the State remedy to oust Federal jurisdiction. *Lane v. Wilson*, 307 U.S. 268, 274 (1939); *United States v. Bureau of Revenue*, 291 F.2d 677, 679 (10 Cir. 1961); *Carson v. Warlick*, 238 F.2d 724, 729 (4 Cir. 1956), cert. denied, 353 U.S. 910 (1957). Nor is this a suit against a

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entitled "An Act to amend and reenact §24-12, as amended, of the Code of Virginia, relating to apportionment of the members of the House of Delegates", both approved April 7, 1962.

State barred by the Eleventh Amendment, as defendants contend. It is a suit against State officials acting pursuant to State laws, a type of action universally held appropriate to vindicate a Federally protected right. *Ex parte Young*, 209 U.S. 123, 155-56 (1908). *Duckworth v. James*, 267 F.2d 224, 230-31 (4 Cir.), cert. denied, 361 U.S. 835 (1959); *Kansas City S&W Ry. v. Daniel*, 180 F.2d 910, 914 (5 Cir. 1950). Likewise contrary to the motion, we find the complaint pleads a class action; it pleads, too, an actual controversy within the Declaratory Judgment Act, 28 U.S.C. § 2201. We sustain, however, the motion to dismiss the Governor and the Attorney General of Virginia as defendants, for they have no "special relation" to the elections in suit. *Ex parte Young*, 209 U.S. 123, 157 (1908).

The remaining ground of the motion asks us to stay the case until the plaintiffs procure the State courts' views [fol. 174] upon the validity of the apportionment. But in our understanding of it abstention is not appropriate here. To begin with, there is no ambiguity in the statutes; they are not in need of interpretation, for they exactly fix and announce the representation of the General Assembly districts. Nor are the Virginia Constitution's provisions, which sired the acts and are quoted in a moment, lacking in clarity. These provisions, argue the defendants, purposely do not outline the criteria by which the apportionment is to be made and advisedly leave the standards to the judgment of the General Assembly. This suggests, defense counsel urge, that Virginia's own courts should first pass upon the composition of the districts, for they are presumably more intimately acquainted with the local conditions doubtlessly weighed by the General Assembly in the passage of the acts. The answer is that there is nothing in the State Constitution referring the General Assembly to any specific local considerations peculiarly within its knowledge. Whether the acts of the Assembly are within the aim and purpose of the Constitution can, therefore, be gained only from the bare words of its clauses, fair inferences from the acts themselves and commentary evidence. This determination is thus as well within the competence of a Federal court sitting in Virginia.

Furthermore, the strong implication of *Baker v. Carr*, if not its command, is that the Federal three-judge court should retain and resolve the litigation. The decision was so read by the Court in *Toombs v. Fortson*, 205 F.Supp. [fol. 175] 248 (N.D. Ga. 1962). Nothing different can be spelled from *Scholte v. Hare*, 369 U.S. 429 (1962). That case was sent back to the State court because it had its origin there, not because the Supreme Court preferred the State court. We find no precedent for abstention in the circumstances of our case.

II. The sections of the Virginia Constitution in suit are these:

"§ 40. General Assembly to consist of Senate and House of Delegates.—The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Delegates.

"§ 41. Number and election of senators.—The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.

"§ 42. Number and election of delegates.—The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts, on the Tuesday succeeding the first Monday in November.

"§ 43. Apportionment of Commonwealth into senatorial and house districts.—The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

The 1962 acts of the General Assembly established 36 senatorial districts, assigning them 40 Senators, and 70 districts for the House of Delegates, distributing 100 mem-

bers among them. The only ground-rule in the State Constitution for the placement of Senators and Delegates is contained, as we have seen, in its section 43's references [fol. 176] to "apportionment of the Commonwealth into senatorial and house districts" and subsequent "reapportionment". These, obviously, are broad dimensions. *Brown v. Saunders*, 159 Va. 28, 166 S.E. 105, 107 (1932).

Nevertheless, the Equal Protection Clause of the Fourteenth Amendment, as the plaintiffs rightly stress, demands that this apportionment accord the citizens of the State substantially equal representation. Plaintiffs charge that the 1962 statutes so far transgress this mandate of the Federal Constitution as to inflict "invidious discrimination" upon the plaintiffs. The injury is suffered, they aver, through their under-representation in the General Assembly occasioned by the misapportionment of Senators and Delegates—their votes have been diluted because the ratio of their population to the number of their representatives is far greater than in the other districts delineated by the acts.

### The Senate

The disparities in the Senate found in the 1962 apportionment acts are pointed up by the plaintiffs' evidence, as follows:

A citizen of Arlington, Fairfax, or Norfolk has representation or voting power in the Senate of *less* than  $\frac{1}{2}$  of that possessed by a citizen of any of 6 of the 33 remaining districts in the State. Putting it conversely, his voting power is more than 2-times the voting power of any of the plaintiffs. Further, in 5 more of the districts the power of each vote is *almost twice* that of any plaintiff on an average. Thus  $\frac{1}{3}$  of the other 33 senatorial districts are nearly 100% richer in each vote's worth than are the plaintiffs' districts.

[fol. 177] In substantiation of this summary the plaintiffs offered in evidence these figures:

Virginia's 1960 population is 3,966,949. Dividing this total by the number of Senators—40—gives an ideal representation of one Senator for each 99,174 persons.

	Arlington	Fairfax	City of Norfolk
Population	163,401	285,194	304,869
No. of Senators	1	2	2
Population per Senator	163,401	142,597	152,435

District	Population	No. of Senators	Population per Senator
Brunswick			
Lunenburg			
Mecklenburg	61,730	1	61,730
Goochland			
Louisa			
Orange			
Spotsylvania			
City of Fredericksburg	62,523	1	62,523
Culpeper			
Fauquier			
Loudoun	63,703	1	63,703
Clarke			
Frederick			
Shenandoah			
City of Winchester	66,818	1	66,818
[fol. 178]			
Halifax			
Charlotte			
Prince Edward			
City of South Boston	67,100	1	67,100
Dickenson			
Wise			
City of Norton	68,803	1	68,803
Bland			
Giles			
Pulaski			
Wythe	72,434	1	72,434

District	Population	No. of Senators	Population per Senator
Greensville			
Prince George			
Surry			
Sussex			
Hopewell	72,951	1	72,951
Norfolk County			
City of South			
Norfolk (now			
City of Chesa-			
peake)	73,647	1	73,647
Dinwiddie			
Nottoway			
City of			
Petersburg	74,074	1	74,074
Appomattox			
Buckingham			
Cumberland			
Powhatan			
Amherst			
Nelson			
Amelia	76,652	1	76,652

Total: 11 districts

### House of Delegates

In the House plaintiffs contend that a vote in Fairfax has less than  $\frac{1}{4}$  of the voting force of a vote in 4 districts; [fol. 179]  $\frac{1}{3}$ —or less than that—of a vote in at least 16 others; and thus the preferred districts amount to a total of 20 of the other 67 districts in the State. In addition, both Norfolk and Arlington have almost double the individual vote-weight of Fairfax; but these two have only approximately  $\frac{1}{2}$  the ballot-potency of 7 districts. The following figures have been adduced to vouch the contention.

With the State population at 3,966,949 each of the 100 Delegates would presumably represent 39,669 persons.

	Arlington	Fairfax	City of Norfolk
Population	163,401	285,194	304,869
No. of Delegates	3	3	6
Population per Delegate	54,467	95,064	50,812

District	Delegates	Population	Population per Delegate
Shenandoah	1	21,825	21,825
Wythe	1	21,975	21,975
Grayson	1	22,644	22,644
Bland	1	23,201	23,201
Loudoun	1	24,549	24,549
Gloucester	1	25,359	25,359
Franklin	1	25,925	25,925
Rockingham	2	52,401	26,200
Buckingham	1	26,385	26,385
Southampton	1	27,195	27,195
Pulaski	1	27,258	27,258
Charlotte	1	27,489	27,489
Alleghany	1	28,458	28,458
Greensville	1	28,566	28,566
[fol. 180]			
Pittsylvania	2	58,296	29,148
Fluvanna	1	29,392	29,392
City of Charlottesville	1	29,427	29,427
Fauquier	1	29,434	29,434
City of Petersburg	2	58,933	29,466
Amelia	1	29,703	29,703

Total: 20 districts

Note: In all the foregoing tabulations the population figures are 1960 census. Unless otherwise indicated the political subdivisions listed are counties. They include all cities and towns within the

III: The next question is whether this inequality amounts to the invidious discrimination that is held to be unconstitutional. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955). True, the imbalance in the districts here appears only in population. While predominant, population is not in our opinion the sole or definitive measure of districts when taken by the Equal Protection Clause. Compactness and contiguity of the territory, community of interests of the people, observance of natural lines, and conformity to historical divisions, such as county lines, for example, are all to be noticed in assaying the justness of the apportionment. Additionally, of course, we must accept as established such reasons for the districting as are fairly conceivable or inferable in and from the result. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

[fol. 181] Plaintiffs here proved the inequity of the allotment of representatives on the basis of population. Thereupon the burden to adduce evidence of the presence of other factors which might explain this disproportion passed to the defendants. But none was forthcoming, if indeed it was available. In an attempt to account for the unevenness, defendants adverted to the large segment in Arlington, Fairfax and Norfolk of military or naval personnel, urging that the General Assembly might have deducted their number in determining the popular count in these areas. But this evidence was not explicit or at all satisfactory. Furthermore, it was hardly helpful for it was conceded that Service men and women could, and many of them do, qualify to vote.

There is little doubt that in Virginia population is the overriding consideration in any distribution of representatives. As the Governor of Virginia stated April 7, 1962, in respect to the reapportionment legislation, "Historically, population has been utilized as the principal factor in redistricting in Virginia, although population alone has never been deemed the sole basis of redistricting". Exactitude in

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county boundaries, such as the cities of Falls Church and Fairfax in Fairfax County. We are concerned with both relative representation and relative voting power as between the districts. No distinction need be observed because, obviously, the number of local voters would not exceed local populations.

population is not demanded by the Equal Protection Clause. But there must be a fair approach to equality unless it be shown that other acceptable factors may make up for the differences in the numbers of people. In view of the accent Virginia has put upon population, the very words in her Constitution—"apportionment" and "reapportionment"—seem to envision popular equality. The Oxford English Dictionary (1933 ed.), volumes I and VIII, contains these definitions:

[fol. 182]

"Apportion:

1. . . .

"2. To assign portions or shares; to divide and assign *proportionally*. . . .

" . . .

"Proportional:

"1. . . .

"2. That is in proportion, or in due proportion; having (suitable) comparative relation; *corresponding*, *esp. in degree or amount*." (Emphasis added.)

In this consideration there is no difference in status between the Senators and Delegates in their disposition throughout the State. The Senate and the House each have a direct, indeed the same, relation to the people. No analogy of the State Senate with the Federal Senate in the present study is sound. The latter is a body representative of the States qua States, but the State Senate is not its regional counterpart. State senatorial districts do not have State autonomy. The bicameral system is a creature of history and many of the reasons for its creation no longer obtain. The chief justification for bicameralism in State government now seems to be, the thought that it insures against precipitate action—imposing greater deliberation—upon proposed legislation. See I Bryce, *The American Commonwealth*, 484 (1917 Ed.); Maddox & Fuquay, *State and Local Government*, 130 ff (1962); Macdonald, *American State Government and Administration*, 116 (6th Ed. 1960); Snider, *American State and Local Government*, 161. ff

(1950); compare *Sikes & Stoner, Bates & Field's State Government*, 176 (4th Ed. 1954).

Indulging all of the reasonable inferences which may be fairly drawn from the redistricting, we can find no rational basis for the disfavoring of Arlington, Fairfax and Norfolk. No acceptable formula, plan or design is [fol. 183] shown us to account for the disparate divisions of the State. We do not mean to establish an allowable tolerance of divergence from the ideal district—whether more or less than a specified per centum. Nor do we intend to say that there cannot be wide differences of population in districts if a sound reason can be advanced for the discrepancies. We merely say none is offered here.

Unconstitutional, invidious discrimination adverse to Arlington, Fairfax and Norfolk has been proved. The inequality in the representation and voting rights occasioned Arlington, Fairfax and Norfolk is a grave deprivation, constitutionally impermissible. That there may be other districts also disadvantaged by the reapportionment has not been overlooked.\* But these additional deviations do not prove the apportionment right or make the plaintiffs whole. Furthermore, as we annul the acts in their entirety, the General Assembly can hereafter reexamine and reappraise the circumstances of any other prejudiced district.

IV. We will enter a judgment declaring the invalidity of the acts. It will also enjoin the defendants from proceeding under this legislation. Prior apportionment statutes have been repealed by the 1962 acts, the defendants concede, and they agree too there is no possibility here of the revival of prior apportionment statutes.

[fol. 184] However, our preference has been, and still is, for the General Assembly of Virginia to square the injustices of the 1962 Acts. But the circumstances did not permit deferment of the determination of this suit until the next regular session of the Legislature, which convenes in Janu-

\* Such as, for example, these *Senate Districts*: (1) Accomack, Northampton, Princess Anne, Virginia Beach; (2) Franklin, Montgomery, Radford, Roanoke; and (3) Newport News, York; and these *House Districts*: (1) Botetourt, Roanoke, Craig; (2) Chesterfield, Colonial Heights; (3) Hampton City; and (4) Portsmouth City.

ary 1964. To begin with, the Senators elected in 1963 would not take office until January 1964 and would serve until January 1968. Similarly, Delegates chosen in 1963 would enter in January 1964 and be in office until January 1966. The disproportionate representations could not be righted by the 1964 General Assembly prior to 1966 in the case of Delegates, and not until 1968 as to the Senators, for there would not be another House election before 1965 and none for the Senate prior to 1967. This delay would be unreasonable.

Nor can we now defer until the 1964 General Assembly the effectuation of our decision. Aside from the reasons just enumerated for the inadvisability of initially continuing the case, to do so now would be to allow the elections scheduled for 1963 to proceed under statutes we have found invalid. However, the present General Assembly may without question take the necessary corrective measures to readjust the district lines.

To achieve these ends, we will stay the operation of the injunction until January 31, 1963, so that the present General Assembly may be convened in special session to enact appropriate reapportionment laws, or the defendants may appeal to the United States Supreme Court. Meanwhile jurisdiction of the cause will be retained, but any further stay of the injunction must be sought from the Supreme Court or one of its Justices. If neither of the steps just mentioned is taken or, if taken, does not result either in [fol. 185] meeting or altering our decision, then the plaintiffs may apply to this court for such further orders as may be required.

An order will be entered in accordance with this opinion.

Albert V. Bryan, United States Circuit Judge.

I concur:

Orem R. Lewis, United States District Judge.

[fol. 186]

HOFFMAN, District Judge, dissenting:

With deference and respect to my learned colleagues, I must dissent.

In 1931 the late Mr. Justice Holmes, speaking for the Court in *Bain Peanut Co. v. Pinson*, 282 U. S. 499, 501, said:

"We must remember that the machinery of government would not work if it were not allowed a little play in its joints."

Unlike the legislatures of many states, Virginia has reapportioned the senatorial and house districts in accordance with the mandate of Sec. 43 of the Virginia Constitution, i.e., in the year 1932 and every ten years thereafter. Admittedly the task of reapportionment is a difficult one and, while discrimination is now apparent when considered in the light of population alone, I am unwilling at this moment to say that it is "invidious". Nor am I able to conclude in law and in fact that Virginia's 1962 Reapportionment Act constitutes "arbitrary and capricious state action" offensive to the Equal Protection Clause of the Fourteenth Amendment in the absence of further guidance from the highest court of our nation or state. In my judgment the decision of the majority places too much emphasis upon the weighted vote of one county, city, or district as contrasted with the weighted vote in another county, city or district.

The landmark decision in *Baker v. Carr*, 369 U. S. 186, was handed down on March 26, 1962. The opinion of the Court, written by Mr. Justice Brennan, consumes 55 pages. Separate concurring opinions by Mr. Justice Douglas, Mr. Justice Clark, and Mr. Justice Stewart require 25 pages. Dissenting opinions by Mr. Justice Frankfurter and Mr. Justice Harlan are contained within 83 pages. It is indeed difficult for judges and attorneys to fully understand the impact of *Baker v. Carr*—to say nothing of legislators upon whom the primary responsibility of reapportionment rests.

The General Assembly of Virginia convened in regular session during January, 1962. It meets every two years. While the specific Acts, now held to be unconstitutional by the majority, were not approved by the Governor until April 7, 1962, the General Assembly had ceased transacting its legislative business several weeks prior thereto. Thus, when *Baker v. Carr* was decided, the General Assembly was no longer in session. The Governor, in approving H.B. 250 and S.B. 145, took cognizance of the decision but concluded

that "the recent Tennessee case need not be cause for alarm in Virginia". While I cannot agree that the entire matter [fol. 187] may be dismissed so summarily, I am of the opinion that the federal court should abstain in order to permit the removal of the existing disparities on the state level.

This is not to suggest that the General Assembly has not already had an opportunity to correct defects in apportionment at the 1962 regular session. The Report of the Commission on Redistricting made substantial progress in adjusting the inequities, but the General Assembly did not see fit to follow this report other than in two or three instances. However that may be, the General Assembly was not confronted with *Baker v. Carr*, and the subsequent decisions at that time. At a later date more mature consideration would undoubtedly bring about adjustments.

Plainly there is not complete unanimity of opinion in *Baker v. Carr*. As Mr. Justice Stewart said in his concurring opinion, (369 U. S. 186):

"The Court today decides three things and no more: '(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) \* \* \* that the appellants have standing to challenge the Tennessee apportionment statutes.'

"Contrary to the suggestion of my Brother Harlan, the Court does not say or imply that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter' \* \* \* The Court does not say or imply that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people'. \* \* \* And contrary to the suggestion of my Brother Douglas, the Court most assuredly does not decide the question, 'may a State weight the vote of one country or district more heavily than it weights the vote in another?'"

The effect of today's decision will open the floodgates to litigation which may be continuous. The majority acknowledges that "there may be other districts also disadvantaged by the reapportionment". Indeed there are although, as yet, they have not seen fit to attack the constitutionality of the Acts in controversy. Accepting the premise that an ideal representation of one Senator is 99,174 persons, and conceding that there are 11 senatorial districts which are rather obviously over-represented, where is the stopping point?

[fol. 188] By way of illustration:

District	Population	No. of Senators	Population per Senator
Accomack )			
Northampton )			
Princess Anne )	131,816	1	131,816
Virginia Beach )			
Franklin County )			
Montgomery )			
Radford )	129,912	1	129,912
Roanoke County )			
Newport News )			
York County )	135,245	1	135,245

The foregoing compare somewhat favorably with the population per Senator in Fairfax which is 142,597, and which is designated as comprising Fairfax County, Fairfax City and Falls Church. The Senate disparity in the City of Norfolk (152,435) and County of Arlington (163,401) is, of course, greater.

Turning to the House of Delegates we find the ideal representation per Delegate to be 39,669 persons. As pointed out by the majority, there are 20 districts which are favored and which vary from "the ideal" by at least 25%. There are likewise districts, which, along with the plaintiffs herein, are subjected to disparity. For example:

District		Delegates	Population	Population per Delegate
Botetourt	)			
Roanoke County	)	1	81,764	81,764
Craig	)			
Chesterfield	)			
Colonial Heights	)	1	80,784	80,784
Hampton	)	1	89,258	89,258
Portsmouth	)	2	114,773	57,386

No attempt has been made to cite the Delegate disparity in certain other districts, apparently under-represented, but which are included in more than one district under the 1962 Act. They are:

Amherst and Lynchburg  
Henrico  
Isle of Wight, Nansemond and Suffolk  
Lynchburg  
Roanoke County

It is sufficient to note, however, that the following districts have more cause to complain as to disparity in the House of Delegates than either Arlington or Norfolk, two of the three plaintiffs in this action:

Botetourt, Craig and Roanoke County  
Chesterfield and Colonial Heights  
Hampton  
Portsmouth

[fol. 189] The interlocutory order to be entered in this case will afford Virginia two alternatives—appeal to the United States Supreme Court or the convening of an extra session of the General Assembly. If the extra session is convened, the appeal will be moot. Assuming *arguendo* that later reapportionment takes care of the needs of Fairfax, Arlington and Norfolk, the additional representatives must be taken from other areas. We would undoubtedly be faced with further litigation as to any county, city or district

where the deviation is beyond 25% of the ideal. Granting relief at this time without sufficient guideposts to govern our action establishes a dangerous precedent.

For all practical purposes this case is decided upon the exhibits and the testimony of a representative of the Bureau of Public Administration, an agency of the University of Virginia. In the report of the Bureau to the Governor's Commission on Redistricting, dated July 10, 1961, it is said:

"It is recommended that the deviation from the ideal size be as little as possible, with most deviations within 15 per cent of ideal size, and exceptions in the most difficult situations within 25 per cent. *It is indeed difficult, if not impossible, to justify deviations beyond 25 per cent.*"

I have no quarrel with the author of that statement—it may be correct—but before approving or disapproving it is my view that a three-judge federal court should be fortified with more authoritative statements as to what constitutes "invidious" discrimination or "arbitrary and capricious state action". Admittedly the population has—and will in the future—be the predominant factor in determining equality of representation. The majority concludes that the plaintiffs have proved the inequity of the allotment of representatives on the basis of population alone. I agree. While the burden of going forward with the evidence may then pass to the defendants, the mere failure to disprove discrimination by population does not, in my opinion, establish "invidious" discrimination when Virginia's overall picture is reviewed. It should be remembered that every intendment must be resolved in favor of constitutionality and the burden of showing unconstitutionality is on those who assail it. *McGowan v. Maryland*, 366 U. S. 420, 425-426; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584; *Toombs v. Fortson*, 205 F. Supp. 248, 256. Proof of discrimination is not, standing alone, sufficient.

While the constitutional requirements of the State of New York differ from those in Virginia, it is significant that a three-judge federal court in New York recently upheld the apportionment of the Senate and Assembly dis-

tricts in *W. M. C. A., Inc. v. Simon*, 208 F. Supp. 368, where the weighted vote demonstrates a far greater disparity [fol. 190] than that which exists in Virginia.

In summary, I view the decision of the majority as, at the very least, intimating that proof of disparity in population is all that is needed. It is contrary to what was said in *MacDougall v. Green*, 335 U. S. 281, 283:

"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government."

In the exercise of our discretionary power as a court of equity and in the public interest, I would retain jurisdiction of this case pending appropriate action in the state courts of Virginia. *Pennsylvania v. Williams*, 294 U. S. 176. This is true even though the rights asserted are strictly federal in origin, *Hawks v. Hamill*, 288 U. S. 52. I can visualize no more delicate a field for the federal courts to refrain from entering, especially where the overall representativeness is as great as in Virginia.

Virginia stands eighth in the nation in an index of representativeness among state legislatures as prepared by the Bureau of Public Administration of the University of Virginia subsequent to the passage of the 1962 Act. More proportionate representation is available only in Oregon, Massachusetts, New Hampshire, West Virginia, Maine, Wisconsin and Alaska. In determining whether the 1962 Reapportionment Act constitutes "arbitrary and capricious state action" or, as described by the majority, "invidious" discrimination, are we to look at the entire pattern of apportionment or should we only consider apportionment of one district as against another? These are, in my judgment, unanswered questions.

One must look to the background of *Baker v. Carr* in order to arrive at the reason for the conclusion reached by the United States Supreme Court. Tennessee's Constitution provided a standard for allocating legislative representation among the several counties or districts according to the total number of qualified voters residing in the respective counties. Decennial reapportionment was likewise re-

quired. For a period of 60 years since 1901, all proposals for reapportionment were defeated in both Houses of the General Assembly. There was no provision for initiative and referendum. The constitutional convention route was thwarted by the Assembly where the call must originate. Of particular significance is the fact that the voters en- [fol. 191] deavored to proceed in the Tennessee Courts without success. These efforts, among others, caused Mr. Justice Clark to say (369 U. S. 259):

"I have searched diligently for other 'practical opportunities' present under the law. I find none other than through the federal courts."

It was as a last resort that Mr. Justice Clark would "consider intervention by this Court into so delicate a field". Simply stated there was no other relief available to the people of Tennessee.

The state courts are open to voters seeking reapportionment rights under the Equal Protection Clause of the Fourteenth Amendment and Civil Rights Act is plain. *Scholle v. Hare*, 369 U. S. 429, where the origin of the litigation was in the state court; *Brown v. Saunders*, 159 Va. 28, 166 S. E. 105, where the Supreme Court of Appeals of Virginia, held the Acts of Assembly, 1932, to be void by reason of a division of the state into congressional districts as being in conflict with Section 55 of the Constitution of Virginia. And in *Lein v. Sathre*, 201 F. Supp. 535, a three-judge federal court in North Dakota stayed proceedings to afford an opportunity to the Supreme Court of North Dakota to pass upon questions arising under the North Dakota reapportionment provisions contained in its Constitution. As early as 1951, a three-judge federal court in Pennsylvania, *Remmey v. Smith*, 102 F. Supp. 708, 711, app. dism. 342 U. S. 916, speaking through Circuit Judge Biggs, stated in an action to declare an apportionment act unconstitutional:

"The determination which the plaintiffs would have us make lies in that extremely sensitive field, the relation of the powers of the National Government to those of the States. Here, of all places, a federal court should tread warily and with great circumspection and should

forego any action where relief may be furnished by the State. This court should not intervene where an apparent, but untried, remedy may lie in the Courts of the Commonwealth of Pennsylvania."

[fol. 192] I agree that there is no ambiguity in the particular statutes under consideration and they are not in need of interpretation *per se*. As construed in conjunction with Sections 41, 42 and 43 of the Virginia Constitution, a state court determination will, at the very least, furnish a guide for future action. I cannot agree that we should disregard the doctrine of abstention merely because the subject matter of the inquiry lies within the competence of a federal court sitting in Virginia; nor do I believe that ambiguity and need for interpretation constitute the only basis for resorting to abstention. There are numerous cases where abstention has been sanctioned on grounds of comity with the States in order to avoid a result in "needless friction with State policies". *Railroad Com. v. Pullman Co.*, 312 U. S. 496; *Pennsylvania v. Williams*, *supra*. That the United States Supreme Court favors the doctrine of abstention is apparent from its more recent decisions. *Harrison v. NAACP*, 360 U. S. 167; *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25; *Martin v. Creasy*, 360 U. S. 219. Of the four cases decided on June 8, 1959, involving the doctrine of abstention, only in *County of Alleghany v. Mashuda Co.*, 360 U. S. 185, did the Supreme Court reject abstention and the initial paragraph of the opinion pointedly suggests that the case "would not entail the possibility of a premature and perhaps unnecessary decision of a serious federal constitutional question, would not create the hazard of unsettling some delicate balance in the area of federal-state relationships, and would not even require the District Court to guess at the resolution of uncertain and difficult issues of state law."

Since *Baker v. Carr* there have been only two cases, from which it appears that the doctrine of abstention was affirmatively raised, where the court declined to abstain. In *Toombs v. Fortson*, 205 F. Supp. 248, a three-judge federal court in Georgia elected to dispose of the entire case without "leaving part of it in limbo pending a later decision by

a State Court". Such is not this case. I do not agree with that portion of the opinion in *Toombs v. Fortson* which intimates that *Baker v. Carr* has held that the doctrine of abstention should be ignored in apportionment cases. Likewise in *Sanders v. Gray*, 203 F. Supp. 158, a three-judge [fol. 193] federal court in Georgia, composed of two of the three judges sitting in *Toombs*, held that there was no adequate state remedy in view of the holding of the Supreme Court of Georgia in *Cox v. Peters* (Ga. 1951) 67 S. E. (2d) 579.

Unlike *Lisco v. McNichols*, 208 F. Supp. 471, where the General Assembly of Colorado had repeatedly refused to apportion in accordance with the Colorado Constitution, Virginia has reapportioned at ten year intervals as required by the bare wording of her Constitution. To prevent a multitude of actions which will undoubtedly result following any hasty reapportionment at any extra session of the General Assembly of Virginia, the entire matter may be resolved by retaining jurisdiction and relegating the parties to the state court for a decision under Virginia's Declaratory Judgment Act.

Wisconsin, a state which claims greater proportionate representativeness than Virginia, has been involved in recent apportionment litigation. *Wisconsin v. Zimmerman*, — F. Supp. —, decided August 14, 1962. Expressing a reluctance to enter orders or directives in such a case, the three-judge federal court dismissed the action without prejudice to the rights of plaintiffs to again file suit after August 1, 1963. The Court noted that a great disparity in population did exist, although not comparable with Tennessee. The action by the federal court in Wisconsin was taken despite the fact that (1) the Wisconsin Supreme Court "had again denied relief", (2) the 1961 legislature did not comply with the requirements of the state constitution, (3) the 1962 special session did nothing to afford relief, and (4) the next session of the legislature would not convene until January, 1963.

We are told that the element of time compels us to act. It is quite true that candidates for the House and Senate must announce their intention by April 15, 1963, if their names are to be considered in any primary election next

July. Unless a candidate elects to proceed by way of mandamus in the Supreme Court of Appeals of Virginia—as was done in *Brown v. Saunders*, supra—it is a foregone conclusion that a proceeding under the Virginia Declaratory Judgment Act would not reach the highest court of the State until after the 1963 general election. At that time members of the House and Senate would be elected under [fol. 194] the 1962 Reapportionment Act. If the regular session of the General Assembly failed to take appropriate action, the state court, or federal court if necessary, could then act. If the 1962 Act is unconstitutional, there is no security of office afforded to the members of the General Assembly. They would, of course, remain as a legislative body for the purpose of doing what the majority opinion now compels them to do in the absence of an appeal.

If they fail to adhere to their constitutional duty, the 1962 Act does not become constitutional by mere inaction. When we balance the equities, it is certainly more appropriate to permit the General Assembly of Virginia to maturely consider the vital issue of voter representation in the light of *Baker v. Carr* and subsequent decisions, rather than to force hasty action which has been known to bring about the enactment of obviously unconstitutional measures. While I would favor the doctrine of abstention to permit the state court to initially determine the questions at hand, as a final alternative I would continue this case until thirty days following the adjournment of the next regular or extra session of the General Assembly of Virginia.

In the event the defendants do not see fit to appeal from the order to be entered pursuant to the majority opinion, and if the General Assembly is not convened in extra session by the Governor, the only alternative will be for this Court to reapportion the State in conformity with legal standards. While I agree that this may be done where the legislature fails to act, it would undoubtedly result in the adoption of Plan "A" (with minor exceptions) which is substantially a mathematical computation according to population, with a maximum deviation of twenty-four per cent. Certainly this Court has nothing else upon which to base its action. When we consider other states, such as New York, Maryland and Hawaii, where the concentration of

population is in one major city, it may be inappropriate to rely so heavily upon population. With the trend of population in Virginia toward urban development, the voting power in this State may soon be vested in the cities. It may benefit Virginia as a whole, but this decision should rest [fol. 195] with its elected representatives and not with a federal court.

A new approach created by new decisions should give rise to action with "deliberate speed" in protecting constitutional rights of those who are subjected to discrimination, but it does not necessarily mean that such discrimination must be corrected forthwith.

[fol. 196] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

At Alexandria

Civil Action No. 2604

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HARRISON MANN *et al.*, Plaintiffs,

v.

LEVIN NOCK DAVIS *et al.*, Defendants.

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INTERLOCUTORY ORDER—November 28, 1962

Upon consideration of the complaint and the intervening petition, the motions of the defendants to dismiss, the answers of the defendants, the briefs of counsel, the evidence adduced at the hearing of this action, and the final arguments of counsel, the Court, for the reasons set forth in its opinion filed herein, Orders:

1. That the Governor of Virginia and the Attorney General be, and they are hereby, dismissed as parties defendant to this action;
2. That the motion of the defendants to dismiss the complaint and intervening petition be, and it is hereby, denied;

3. That the Court should, and does hereby, declare and adjudge that the acts of the General Assembly of Virginia, approved April 7, 1962, appearing as Chapter 635, page 1266, and Chapter 638, page 1269 of the 1962 Acts of the Assembly of Virginia, deny the plaintiffs and those persons similarly-situated the equal protection of the laws in contra-[fol. 197] vention of the Fourteenth Amendment of the Constitution of the United States, and that the said acts for that reason are void and of no effect;

4. That the defendants be, and each of them is hereby, restrained and enjoined from proceeding under or pursuant to the said acts of the General Assembly of Virginia; but

5. That the enforcement of said injunction shall be stayed until January 31, 1963 so that (1) the General Assembly of Virginia may, if the Governor of the State or the requisite number of members of the General Assembly are so advised, be called and convened in special session to enact appropriate reapportionment statutes under the Constitution of Virginia and the Constitution of the United States; or that (2) during the said suspension the defendants may appeal to the Supreme Court of the United States for a review of this order, but any further stay of this order shall be sought from the Supreme Court or a Justice thereof;

6. That if neither of the steps stated in the foregoing paragraph is taken, or, if either is taken but it does not alter or meet the determination herein made, then the plaintiffs may apply to this Court for such further orders as may be required; and

7. That jurisdiction of this action be, and it is hereby, retained for the entry of such other orders as may be necessary or proper.

Albert V. Bryan, United States Circuit Judge.

Orem R. Lewis, United States District Judge.

I dissent:

Walter E. Hoffman, United States District Judge.  
November 28, 1962.

[fol. 203]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
At Alexandria

Civil Action No. 2604

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed December 10, 1962

I. Notice is hereby given that Levin Nock Davis, Secretary, State Board of Elections; Alexander M. Harman, Jr., Member, State Board of Elections; Robert C. Bayliss, Member, State Board of Elections; H. Bruce Green, Clerk of the Circuit Court, Arlington, Virginia; Thomas P. Chapman, Jr., Clerk of the Circuit Court, Fairfax, Virginia; Denman T. Rucker, Maynard Carlisle, and Ralph Kimble, Members of Electoral Board, Arlington County, Virginia; Paul Kincheloe, Ebner L. Duncan, and Jones Jasper, Members of Electoral Board, Fairfax County, Virginia; William L. Prieur, Jr., Clerk of Corporation Court of City of Norfolk, Virginia; James M. Wolcott, Member, Electoral Board of City of Norfolk, Virginia; Joseph T. FitzPatrick, Member, Electoral Board of City of Norfolk, Virginia; and James E. Baylor, Member, Electoral Board of City of Norfolk, Virginia, the defendants in the above-styled case, hereby appeal to the Supreme Court of the United States from that [fol. 204] part of the interlocutory order entered in this action on November 28, 1962, denying the motion to dismiss the complaint and intervening petition; declaring and adjudging Chapters 635 and 638, Acts of Assembly of Virginia, 1962, void and of no effect as denying the plaintiffs and those persons similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States; and restraining and enjoining the defendants from proceeding under or pursuant to the said acts of the General Assembly of Virginia.

This appeal is taken pursuant to 28 USC § 1253.

II. The clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The complaint and intervening petition
2. The motions of the defendants to dismiss
3. The answers of the defendants
4. The majority and dissenting opinions of the three-judge district court
5. The interlocutory order of the court
6. All of the exhibits filed by the defendants
7. The deposition of Ralph Eisenberg filed by the plaintiffs
8. The notice of this appeal

III. The following questions are presented by this appeal:

1. Did the three-judge district court err in refusing to dismiss the complaint and intervening petition on the grounds, or any of them, set forth in the defendants' motions to dismiss?

[fol. 205] 2. Did the three-judge court err in declaring and adjudging that Chapters 635 and 638, Acts of Assembly of Virginia, 1962, denied the plaintiffs and those persons similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States?

3. Did the three-judge district court err in restraining and enjoining the defendants from proceeding under or pursuant to the said acts of the General Assembly of Virginia?

Robert Y. Button, Attorney General of Virginia.

R. D. McIlwaine, III, Assistant Attorney General.

Supreme Court Building, Richmond 19, Virginia.

David J. Mays, Special Counsel.

Henry T. Wickham, Special Counsel, Attorneys for  
Appellants.

Tucker, Mays, Moore & Reed, 1407 State-Planters Bank  
Bldg., Richmond 19, Virginia.

[fol. 206] Proof of Service (omitted in printing).

[fol. 208] Clerk's Certificate to foregoing transcript  
(omitted in printing).

[fol. 209]

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SUPREME COURT OF THE UNITED STATES

No. 797—October Term, 1962

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LEVIN NOCK DAVIS, Secretary, State Board of  
Elections, et al., Appellants,

vs.

HARRISON MANN, et al.

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Appeal from the United States District Court for the  
Eastern District of Virginia.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

The statement of jurisdiction in this case having been  
submitted and considered by the Court, probable jurisdic-  
tion is noted.

[fol. 210]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division  
Civil Action No. 2604

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HARRISON MANN, et al., Plaintiffs,

vs.

LEVIN NOCK DAVIS, et al., Defendants.

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Charlottesville, Virginia  
August 28, 1962

Exhibits to Accompany

DEPOSITION OF RALPH EISENBERG—  
Received September 17, 1962

# NEWS Letter

Editor Weldon Cooper

Vol. XXXVII, No. 8

Bureau of Public Administration, University of Virginia, Charlottesville, Virginia

April 15, 1961

## LEGISLATIVE APPORTIONMENT: How Representative is Virginia's Present System

By RALPH EISENBERG, Department of Political Science  
and Bureau of Public Administration,  
University of Virginia

The completion and subsequent publication of the results of the 1960 Federal census have revived the issue of the adequacy of political representation in legislative bodies throughout the United States. The shifts in the pattern of population distribution among the states within the states, and within local units of government, revealed by the census often necessitate adjustments in the apportionment of political representation in legislative bodies. Such modifications in apportionment systems are necessary where population is the basis for representation in a legislative chamber, as in the U.S. House of Representatives. Most state constitutions require that their legislative chambers which based upon population, for representation purposes be reapportioned or redistricted following each decennial census. Therefore, in many states, apportionment is one of the most important issues confronting legislative sessions this year or next year.

### VIRGINIA'S APPORTIONMENT PROBLEM

The Commonwealth of Virginia must face this issue in the 1962 session of the General Assembly. The Virginia Constitution provides that a reapportionment of senatorial and house districts "... shall be made ... every ten years ...".<sup>1</sup> The Constitution does not stipulate explicitly that the basis of apportionment in both houses of the General Assembly is to be population. Nevertheless, population has been the basis for representation in both

the House of Delegates and the State Senate. The General Assembly employed population as the basis for its reapportionments following the 1940, and 1950 censuses when it exercised the constitutional directive to reapportion.<sup>2</sup> Although population was consistently the basis for the apportionment of those years, it was not specifically mentioned in the statutes that detailed the representation allotted to the counties and cities of the Commonwealth.

The 1952 reapportionment acts divided the Commonwealth into 76 districts for the election of the 100 members to the House of Delegates and into 36 districts for the election of 40 State Senators. A slight and nonsubstantial amendment was enacted in 1959 which modified the apportionment system in order to accommodate new cities and consolidated cities created after 1952.<sup>3</sup> The number of House districts was reduced to 74 in the process of the adjustment. But there was no effect on the continuing representation to the various areas of the Commonwealth.

The 1960 Federal census reveals that Virginia's population increased 19.5 per cent in the preceding decade to a total of 3,966,949 inhabitants as of April 1, 1960.<sup>4</sup> This growth in population was not uniform throughout the Commonwealth; some counties and cities had greater proportionate increases than others; some

counties actually lost population since 1950. The disparate effect of the census upon the various counties and cities of the Commonwealth renders the 1952 apportionment system out-of-date and creates the need for reapportionment in 1962.

The inadequacy of a system of political representation based upon the 1950 census for the decade of the 1960's becomes apparent when the distribution of political representation among the counties and cities is contrasted with the results of the two censuses. Virginia's apportionments historically have been rather satisfactory as measured by their relationship to population distribution in the Commonwealth. Generally, Virginia has extended political representation to counties and cities in proportion to their relative shares of the State's total population. But, while an apportionment scheme may be most representative of the census data upon which it was founded, it may be rendered inadequate by the results of the subsequent census. The necessary adjustments in the apportionment system then must be considered by the General Assembly.

Persons concerned with the problem of legislative apportionment have developed techniques to measure how representative is a state legislature's apportionment. Some of these techniques can be applied to Virginia's apportionment system to demonstrate the impact of the 1960 census upon the existing system and to yield comprehensible results to scholar, politician, and citizen alike.

### DAUER AND KELSAY METHOD

The first of these techniques was employed in 1955 by Manning J. Dauer and Robert G. Kelsay of the University of

1. Va. Con., sec. 45. The full text of the constitutional provision is as follows: "The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter." The 1928 amendment made no substantive change in this portion of the Constitution, but merely served to bring the section up to date.

2. Acts, 1952, p. 930; *Ibid.*, 1954, p. 252; *Ibid.*, 1942, pp. 620, 622; *Ibid.*, 1952, Ex. Sen., pp. 45-48. Prior to 1952, the General Assembly had not reapportioned the House of Delegates since 1910 (Acts, 1910, p. 9) and the Senate since 1902 (Acts, 1901-1902, p. 800); the Constitution adopted in 1902 embraced the 1902 statutory apportionment.

3. Acts, 1958, pp. 388-392.

4. U. S. Bureau of the Census, 1960 Census of Population: Advance Report. Final Population Counts (Virginia). (Washington: Government Printing Office, November 30, 1960).

THE UNIVERSITY OF VIRGINIA  
**NEWS Letter**

Editor

WELDON COOPER

Assistant Editor

WILLIAM M. GRIFFIN

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Florida.<sup>5</sup> The assumption that underlay their analysis was that a truly representative legislative body permitted a majority of the people in a state to elect a majority of the legislators. This was especially true of legislative chambers whose base of representation was population. In order to measure how closely this ideal situation was approximated in the states, they conducted a broad study of the apportionments of all state legislatures to determine the smallest percentage of a state's population which could theoretically elect a majority of each legislative house.

The Dauer and Kelsey study revealed that Virginia's 1952 apportionment act in response to the results of the 1950 census displayed a high degree of representativeness measured by their standards. They calculated in Virginia that 43.69 per cent of the people could elect a majority of the House of Delegates; and that 43.93 per cent of the people could elect a majority of the State Senate. This was impressive compared to other states. Dauer and Kelsey ranked the states in the order of the size of these percentages necessary to elect majorities in lower and upper legislative houses in the states. Virginia was ranked sixth highest among the states in the percentages necessary to elect a majority in lower houses, and ninth among state upper chambers. Among lower chambers, South Carolina, ranked first, required 46.72 per cent of its population to produce a majority, while majorities could be produced by only 19.4 per cent of the people of Delaware, 17.19 per cent in Florida, 12.58 per cent in Vermont,

5. Manning J. Dauer and Robert G. Kelsey, "Unrepresentative States," 44 *National Municipal Review*, 571 ff (December, 1955).

TABLE I  
Virginia Legislative Apportionment Data  
By Dauer and Kelsey Method

Year	Chamber	Minimum Percentage of Population Needed to Elect a Majority	Average Population Per Representative	Smallest Population Per Representative	Largest Population Per Representative
*1955	Senate	43.93	82,967	55,007	138,449
1961	Senate	37.65	90,174	51,007	238,194
*1955	House of Delegates	43.69	33,187	14,057	82,233
1961	House of Delegates	36.75	39,660	25,071	142,597

\*Source: Dauer and Kelsey, "Unrepresentative States," 44 *National Municipal Review*, 572 and 574 (December, 1955).

and 9.59 per cent in Connecticut. Among upper chambers, Massachusetts was highest with 48.76 per cent and Nevada and California lowest with 12.36 per cent and 11.88 per cent, respectively.

The question that is relevant in 1961, however, is how many people in Virginia now may theoretically elect majorities in the General Assembly. The results of the 1960 census have altered considerably the minimum percentages required. Only 36.75 per cent of the Commonwealth's population can elect a majority in the House of Delegates and 37.65 per cent a majority in the State Senate. This indicates how less representative Virginia's apportionment system has become in 10 years. Table I illustrates this contrast in the adequacy of the representative system.

#### NATIONAL MUNICIPAL LEAGUE APPROACH

A more common approach employed by those who apportion representation by population is to determine how many people each representative ideally should represent. This is found by dividing the total population of a state by the number of representatives in a legislative house. In Virginia, after 1950, for example, the population of the Commonwealth, 3,318,680, was divided by 100, the number of members of the House of Delegates, and by 40, the number of State Senators. The results of such elementary mathematics were 33,187 as the number of people that each delegate should represent, and 82,967 as the number that each Senator should represent. These numbers were the State average population per representative in each house of the General Assembly. Virginia's apportionment system would have been perfect if every legislator represented this State average population per representative. Obviously, it is most difficult to draw district lines or otherwise to allocate representation in such a way as to achieve that result. Nevertheless, the more nearly equal that the population represented by each legislator is, the more that the potential vote of every citizen in the State will be equal, since it will carry

nearly the same weight toward the election of any legislator. This is demonstrated convincingly by noting that an individual's vote in a district containing only 10,000 people will be worth 10 times that of a citizen in a district with 100,000 population. Efforts to reapportion or redistrict, therefore, should seek to achieve a condition of equality of population represented by each legislator in order to approximate a condition of equality in the value of the vote possessed by every citizen in the state. How successful these efforts are is often difficult to establish in clear and meaningful terms so that citizens appreciate the impact upon their vote. But attempts to measure the impact have been and are being made.

One such attempt was made in 1960 when the National Municipal League published a collection of statistics about the apportionment systems of all the states.<sup>6</sup> The focus of that collection of data was the state average population per representative in every legislative chamber, and the deviations from that figure in the various legislative districts. The study was necessarily based upon 1950 census figures. Of particular importance in the League data were the percentages of average deviation in each state from what the ideal state average population per representative was for each legislative chamber. In other words, the study noted the deviations from the ideal average population per representative in every district and then calculated the average deviation from that figure for the entire state. It presented this as a percentage of average deviation from the state average population per representative.

Virginia again held an impressive comparative position among the states in this analysis of its apportionment system and the 1950 population of the Commonwealth. The percentage of average deviation from the state average in Virginia

6. *Compendium on Legislative Apportionment* (New York: National Municipal League, 1960).

was calculated as 15.4 per cent in the lower house and 17.6 per cent in the upper houses. In a rank order of such percentage deviation figures in which the lower percentages were most desirable, Virginia ranked *ninth* among upper chambers and *eighth* among lower chambers. Its percentage of 15.4 per cent deviation for the lower house compared with that of 8.4 per cent for South Carolina and 9.8 per cent for Illinois as the best among the states, and 238.4 per cent for Georgia and 100.48 per cent for Connecticut as the worst. Among upper houses, Virginia's 17.6 per cent deviation compared with 7.9 per cent for Delaware, 8.21 per cent for Wisconsin, and 8.4 per cent for Arkansas with the least deviations, while Rhode Island's 173.33 per cent and Georgia's 112.6 per cent possessed the largest deviations.

These percentages of average deviations do not express completely the picture of apportionment in Virginia. The actual average deviation from the state average population per representative of 33,187 for the House of Delegates was 5,104; in the State Senate the deviation was 14,609 from the state average of 82,967. However, applying this same analysis to the results of the 1960 census demonstrates the effect of population growth and movement. The growth of Virginia's total population by 1960 increased the state average population per representative in each house. Now, the state average is 39,669 for the House of Delegates and 99,174 for the State Senate. The increases in the state averages result in increasing deviations from that figure in the various legislative districts, so that the average deviations and the percentages of average deviation have increased correspondingly. The average deviation from the state average per representative in the House of Delegates on the basis of the 1960 population is now 12,418; it is 29,150 in the State Senate. As a result, the percentages of average deviation have rocketed to 31.30 per cent for the House and 29.39 per cent in the Senate. By this measure, it would seem that Virginia's present apportionment system is only about half as representative for the decade of the sixties as it was for the decade of the fifties. This impact is dramatized effectively in Table II.

To this point, the changes in the representative nature of Virginia's legislative apportionment have been presented so as to convey an over-all view of the adequacy of representation in the General Assembly as a whole. It is more meaningful to dis-

Census Year	House	Average Population per Representative	Average Deviation of Population from State Average Population/Rep.	Percentage Average Deviation from State Average Population/Rep.
*1950	Senate	82,967	14,609	17.6
1960	Senate	99,174	29,150	29.39
*1950	House of Delegates	33,187	5,104	15.4
1960	House of Delegates	39,669	12,418	31.30

\*Source: *Compendium on Legislative Apportionment*. National Municipal League, 1960. Statistics for 1950 averages are based on the apportionment as modified slightly in 1958.

cuss as well the inequities in representation accorded to individual legislative districts and (or) counties and cities, on the basis of both 1950 and 1960 populations.

The average deviations described above do not reflect the significant absolute deviations in the number of people represented by legislators. Before 1960, for example, the largest population represented by a delegate was the 61,787 of the City of Alexandria. On the other hand, the smallest legislative district encompassed the 19,218 persons of Botetourt and Craig counties, also represented by one delegate. Thus, there was almost a three-fold difference between the largest and smallest populations per representative. After 1960, however, the gap between the least and most represented districts of the State became considerably wider. The largest population represented per delegate is now 142,597 occurring in the Delegate district comprising Fairfax County and the City of Falls Church. This area of 285,194 persons is represented by only two delegates! By contrast, the legislative district composed of Botetourt and Craig counties still has its one delegate representing only 20,071 persons. The difference in extremes of representation has now grown to seven times.

In the same way the difference between

the largest and smallest populations represented by State Senators has multiplied. Arlington County composed of 135,449 persons was the largest district after 1950 while the smallest district was composed of Culpeper, Fauquier, and Loudoun counties that contained 55,637 persons, roughly half the size of the largest district. Now, the smallest Senate district is made up of Lee and Scott counties with a total population of 51,637. By contrast, the largest Senate district contains the 285,194 population of Fairfax and Falls Church. There is now almost a six-fold difference between the population extremes of Senate districts.

#### DAVID TECHNIQUE

Still another method for demonstrating the ineffectiveness of the apportionment system has been developed recently by Professor Paul T. David of the University of Virginia.<sup>7</sup> David's approach utilizes the important figure of state average population per representative and compares it to the actual population per representative possessed by the various legislative districts or counties and cities of the Commonwealth in order to produce

7. This analysis is now being applied in a study of under and overrepresentation in state legislative apportionments throughout the United States being conducted by the Bureau of Public Administration of the University of Virginia under the direction of Paul T. David and Ralph Eisenberg.

TABLE III  
Virginia Legislative Apportionment Data  
By David Method

Census Year	Units by Categories of Population Size	No. of Total Population Units* in Census Year	Proportionate Share of Voting Strength of Legislature: No. of Members		Average Values of the Vote for Representation in		
			Lower House	Upper House	Lower House	Upper House	Legislature
1960	Under 25,000	86	1,083,729	33.53	13.66	1.23	1.24
	25,000-99,999	36	1,573,213	41.95	16.95	1.06	1.06
	100,000-499,999	7	1,310,007	24.52	9.39	.74	.73
	Totals and Averages	129	3,966,949	100.00	40.00	1.00	1.00
1950	Under 25,000	84	1,044,260	34.91	14.26	1.11	1.12
	25,000-99,999	38	1,695,148	49.09	19.74	.96	.96
	100,000-499,999	3	579,272	16.00	6.00	.88	.89
	Totals and Averages	125	3,318,680	100.00	40.00	1.00	1.00

\*Number of units determined by reference to cities and counties in the apportionment act and the census data available for them.

an index figure that ascertains more precisely the extent of under or overrepresentation enjoyed by any particular legislative district, county or city, or any group of counties and cities. His analysis assumes that the value of a citizen's vote in a district that is the size of the state average population per representative is 1.00, because if all districts were this size, the votes of all citizens would be equal. By relating the actual population per representative to what the state average is, he is able then to demonstrate what the precise value of a citizen's vote is in the various units of government in the state. Indices larger than 1.00 indicate overrepresentation and indices that are less than 1.00 indicate underrepresentation. The greater the deviation of the index figure from 1.00, the greater is the extent of over or underrepresentation.

For example, the indices of the average values of the vote in the Virginia counties and cities cited above as deviating most from the State average population per representative illustrate graphically the degree of representativeness of those districts. With the David analysis, the value of the vote for delegate in underrepresented Alexandria before 1960 was .54. Meanwhile, the overrepresented Botetourt and Craig county citizen had a vote valued at 1.75. Similarly for the Senate, the voter in Arlington County possessed a vote valued at only .61 but the voter in overrepresented Culpeper, Fauquier, and Loudoun counties possessed a vote valued at 1.49. Similarly now, the voter in underrepresented Fairfax and Falls Church has a vote valued at only .28 in the election of delegates and at .34 for the election of State senator. However, overrepresented Botetourt and Craig counties now have a vote for delegate that has grown in value to 1.98, and Lee and Scott counties possess a vote valued

at 1.92 for the election of a State senator.

An advantage to this method of analyzing deficiencies in the representative character of apportionment systems is its capacity to identify clearly what parts of a state are bearing the brunt of under or overrepresentation. It also dramatically conveys the impact of the 1960 census upon such systems. The analysis is particularly designed to measure the adequacy of representation possessed by urban and suburban areas. This is accomplished by categorizing the counties and cities of the Commonwealth by population size, with the category of largest population size assumed to be urban and suburban. The representation possessed by each of these categories of counties and cities then can be equated with the total population within the category to produce a result that is an index of the value of the vote in each category. Table III illustrates the results of such categorization when the apportionment system is analyzed using the results of both the 1950 and 1960 censuses.

The table reveals that the extent of over and underrepresentation was not too marked on the basis of 1950 population figures. Overrepresentation characterized counties and cities of less than 25,000 population with an average vote value of 1.12, while urban areas were underrepresented with a vote value of .89. But using 1960 census figures, it is evident that the value of votes in urban and suburban areas has been seriously decreased, relatively to what it was after 1950 and absolutely on the basis of what it is in 1961. The seven most heavily populated counties and cities of the State are presently significantly underrepresented with a vote valued at .73 while the most sparsely populated units are overrepresented with a vote valued at 1.24.

This analysis is of further great use in

identifying the particular counties and cities that are most under or overrepresented. In the House of Delegates, in addition to those cited above, the most underrepresented areas and their vote values are: Hampton, .45; Princess Anne County and Virginia Beach, .47; and Henrico County, .54. Similarly, the additional most overrepresented areas and their vote values are: Accomack County, 2.12; Shenandoah County, 1.82; Wythe County, 1.81; and Buchanan County, 1.78. In the Senate, in addition to the extremes noted above, the over and underrepresented areas are Carroll, Floyd, and Grayson counties and Galax with votes valued at 1.76 in contrast to the Richmond suburban areas of Charles City, Chesterfield, and Henrico counties and Colonial Heights with votes valued at .49.

#### CONCLUSION

The impact of these analyses of how representative Virginia's existing apportionment system is illustrates the task facing the 1962 session of the General Assembly. If population is to remain the primary basis for political representation in Virginia's legislature, then alterations must be made in the apportionment system to correct the disparities in the distribution of representation revealed by the 1960 census. Virginia's apportionment, by whatever test is applied, has become much less representative. It no longer reflects accurately or adequately the distribution of population throughout the Commonwealth. The inequities in the system are obvious for both individual districts and counties and cities as well as for the legislative body as a whole. It remains for the General Assembly to remedy the system as best it can so that the potential votes of all citizens may be more nearly equal, a task that it has performed comparatively well in the past.

[Vol. 214]

THE UNIVERSITY OF VIRGINIA

## NEWS Letter

Bureau of Public Administration  
Charlottesville, Virginia

Entered as  
second class matter  
Charlottesville, Virginia

[fol. 215]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 2

REPORT NO. 3 to COMMISSION ON REDISTRICTING

8/28/62 GH\*

GENERAL ANALYSIS OF PROBLEMS  
OF REAPPORTIONMENT  
AND REDISTRICTING

Bureau of Public Administration  
University of Virginia  
July 10, 1961

[fol. 216]

GENERAL ANALYSIS OF PROBLEMS  
OF REAPPORTIONMENT  
AND REDISTRICTING

*Methods of Reapportionment*

Legislative reapportionment involves the periodic re-allocation of representation in a legislative body among the various segments of a political society. The concept of reapportionment carries the premise that there is a need for periodic readjustments in the distribution of representation because changes over time affect the basic units of representation.

In the United States, reapportionment is necessary in legislative chambers where representation is based upon population. The need for reapportionment develops because of shifts in the distribution of population among the various parts of the political society. In the United States Congress, the principle of equal representation for

\* Pencil notation.

each state in the Senate is fixed by the Constitution. However, in the House of Representatives, where the basis for representation is the population of the various states (with a guarantee of at least one representative per state), there is need for periodic readjustment of the representation accorded to each state. Because of the federal system, the problem of reapportioning the House, as far as Congress is concerned, now involves merely the distribution of a fixed number of seats among a fixed number of states. Thus, periodic readjustments of representation in the House of Representatives are made by reapportionment and not by redistricting. States then may redistrict themselves to accommodate the representation in the House apportioned to them.

Among the states, reapportionment similarly is necessary in cases of legislative chambers primarily based upon population. The mechanics of reapportionment are relatively simple in those states that employ the county as the [fol. 217] fixed unit among which the seats in the legislative chamber are apportioned according to the county populations. The problem involves merely the determination of the number of seats in the legislative chamber to be allotted to each county, with the precise number varying according to the particular apportionment used.

Still other states distribute representation among counties by designating a fixed number of seats to counties falling into particular population categories. Such states face a less difficult reapportionment task than does Virginia, although the inequities that arise in such a system are severe. A more recent approach to state legislative reapportionment emulates the federal government by taking the responsibility out of the hands of the legislature almost entirely. These states employ special commissions, composed usually of various state officials who serve as ex officio members to devise reapportionment plans according to a constitutionally or statutorily prescribed formula or method. The greatest advantage to such commissions is that they remove the reapportionment problem from the legislature and the consequent political difficulties it engenders there. The adoption of such a method for reapportionment is currently being pressed in many states.

### *Fixed Ratios*

Brief mention and description of the various methods of apportionment are appropriate for an understanding of the complexities in the mechanics of reapportionment. Two general approaches can be noted in the various methods employed or suggested for reapportioning legislative bodies that have a fixed number of seats to be distributed among a fixed number of political units (states, counties, etc.). Older apportionment methods employ *fixed ratios* to allocate representation; more modern methods use *prior*-[fol. 218] *ity lists* for allocation of representation. The Vinton method typifies the use of fixed ratios. It was employed to reapportion the United States House of Representatives after the federal censuses of 1850 and 1890. This method at the state level would operate in the following manner if seats were to be allotted to counties as they are to states at the federal level. The state population is divided by the number of counties to obtain the fixed ratio (or state average population per representative). The fixed ratio is divided into the population of each county to obtain the exact quota of representation for each county. Then each county is allotted its representation for the *whole* numbers in its exact quota. The remaining seats are then allocated among the counties having the largest fractions in their exact quota. Use of the Vinton method was discontinued by Congress because of the "Alabama Paradox." This means that a state that had grown between apportionments at a greater rate than other states could lose seats while other slower-gaining states might gain seats despite an increase in the total size of the legislative body.

The Arithmetical Elimination process similarly involves the use of a fixed ratio determined exactly as in the Vinton method. However, this method involves adjustment of county population figures that exceed the fixed ratio in order to allocate the remaining legislative seats.

### *Priority Lists*

There are five so-called modern methods of apportioning representation that employ priority lists. The priority list

is a device for distributing additional legislative seats (after one per county is allocated). The priority list creates an order of precedence in allotting the additional seats to counties that merit them. For example, applied to Congress [fol. 219] the list would declare what state was entitled to seat number 51, 52, 53, etc. to seat number 435.

The method termed "equal proportions" uses a priority list that is determined by dividing the unit populations successively by the geometric mean (square root of the product) of each pair of successive numbers of representatives beginning with 1 and 2, 2 and 3, and in order of increasing magnitude until the number of quotients calculated for each unit exceeds by at least one the number of additional seats to be awarded. All of the quotients then are arranged by magnitude on the priority list with the largest first, and the remaining seats are allocated to the highest on the list until the last seat is distributed.

The other modern methods employ the list in the same way but determine the list by a different mathematical method. The method of Major Fractions, for example, employs a priority list computed by dividing the state population successively by the arithmetic mean (the sum of two numbers divided by 2), between succeeding representatives; the method of the Harmonic Mean divides the state population by the harmonic mean (twice the product of two numbers divided by their sum) of its present assignment of representatives and of its next highest assignment of representatives; the Smallest Divisors Method divides the state population by successive numbers of representatives beginning with 1; and the Greatest Divisors Method divides the state population by successive numbers of representatives beginning with 2.

So many methods were developed because there are several different standards by which to measure the adequacy of an apportionment system. A good apportionment of representation should produce a system in which there is the least amount of difference between districts in either the population per representative, or conversely, an individual's share in a representative. But even the amount of difference between districts may be determined

by either of the two above standards in more than one way. Differences between any two quantitative units are either absolute or relative, and each of the above methods of apportionment produce, or may produce, different results at any one time for either of the four variables mentioned above: to wit, the absolute difference in population per representative, the relative difference in population per representative, the absolute difference in an individual's share in a representative, or finally the relative difference in an individual's share in a representative. The most acceptable method is the one that produces the least difference in the most desirable standard category. The method of equal proportions is considered by many persons to be the most desirable method because it produces the least differences in both the relative difference in population per representative as well as in relative share in a representative. This method is currently used in the reapportionment of the U.S. House of Representatives. The method of Major Fractions also has had strong support.

### *Other Methods*

The common practice of fixing the number of representatives by population category for counties can be illustrated hypothetically by considering a state that provided in its constitution or in a statute that all counties with a population of less than 50,000 would be entitled to 1 representative; counties with 50,000 to 99,999 would have 2 representatives; counties with populations of 100,000 to 149,999, 3 representatives; and so on with additional representatives possibly being given to counties with a major fraction within the population range. Occasionally states also set a maximum size to the total number of representatives that any one county may have. For example, a state may provide that [fol. 221] counties over 200,000 are entitled to 5 representatives; hence, a county of 201,000 would have the same 5 representatives while a county of 1,000,000 might have the same number. Another variation of this method uses a constant fixed ratio where representation is allotted to the various counties by dividing the fixed ratio into the county population to obtain the number of representatives to be

allotted to that county, with or without provision for the disposition of the major fraction. The prerequisite of a system of this kind is that the total number of representatives not be fixed, because as the population of the state, and of the various counties within the state, increases, the inevitable result is that the size of the legislative chamber itself will increase. Generally, use of this method or any of its variations produces great inequities in legislative representation, and states employing them are usually found at the worst end of the spectrum of representative legislatures.

### *Reapportionment in Virginia*

Virginia exemplifies the states whose reapportionment task is essentially that of redistricting rather than merely reapportioning the distribution of representation among the various counties and cities of the Commonwealth. There are no units in Virginia that may be conveniently used for purposes of allotting representation in the legislature. Because the maximum size of the legislative chambers in Virginia are set by the State Constitution at forty and one hundred, and because there are ninety-eight counties and 32 cities in the Commonwealth among which the small number of total representatives can be distributed, there is no possibility that either counties or cities can serve as basic units for representation. Instead the various counties and cities must be combined into districts to elect representatives. Each time that a federal census demonstrates the [fol. 222] need for reapportionment of representation, new districts, combinations of cities and counties, must be devised. The task is far more difficult than that faced by states with some fixed representation scheme or with a relatively small number of counties. Virginia's problem is more complex because of the existence of independent cities, which adds 32 additional political units that must be considered in the construction of legislative districts. The large number of counties and cities and the small number of legislative seats precludes the use of the mathematical methods described above.

Any of the above-mentioned reapportionment methods could be used in Virginia if the state first were districted and then an appropriate method used to allot representation to each of the districts so created. This approach is possible, but it does not really solve the problem of districting—redistricting would still have to be done and the problems associated with it would still exist. The only advantage to such a procedure is that the number of districts to be created would be much smaller than the number involved in redistricting the state into as many single-member or multi-member single-county districts as possible. Even this advantage would be offset if further districting into single-member districts within larger districts were desired.

### *Redistricting Standards*

Redistricting differs markedly from reapportionment because reapportionment takes place with already existing districts. Therefore, in reapportionment, the problems involved in creating districts do not exist; instead, the problem is one of determining how many representatives should be allotted to each existing district. Constructing districts is a far more complex task. Evidence of this is found in the [fol. 223] United States House of Representatives where reapportionment is easily accomplished by the certification of the number of representatives to which each state is entitled as a result of the last preceding census. But the subsequent problem for a state legislature following congressional reapportionment is to create congressional districts; to join the various parts of a state in such a way as to provide equitable and logical representation for all.

### *Variations in District Size*

The primary criterion that is operational in the creation of any legislative districting arrangement is population equality. The virtual impossibility of achieving perfect equality in the construction of legislative districts is conceded, but the accepted goal is that of districting to achieve population equality as nearly as practicable. However, even the term "as nearly as practicable" is not completely meaningful. Although it obviously means something close

to population equality, the key question is just how close to population equality is "as practicable"? Or stated in other words, how much deviation from the ideal size of a legislative district should be tolerated? Or, how much absolute difference will be tolerated between the smallest legislative district and the largest?

There is no simple answer to the question of how much deviation in district size can be permitted while the notion of "as nearly equal as practicable" is still retained. A committee of the American Political Science Association in 1951 addressed itself to this problem in relation to congressional districts and it recommended that an effort be made to keep the deviation of any district from the state-wide average for all districts within a limit of ten per cent. But it went on to urge that such deviation not be permitted to exceed fifteen per cent. The Committee felt that some [fol. 224] specification of the permissible variations from equality was very desirable, but that the particular percentages were not essential in themselves as long as they made "fair allowance for the practical difficulties which state legislators must face." More recent attention to the problem has exhibited greater tolerance of the extent of deviation from the state-wide averages for legislative districts. This tolerance is exemplified by proposed statutes and constitutional amendments concerning congressional districts that have accepted limits of 20 per cent and 25 per cent upon the permissible deviations for such districts created by state legislatures. The intent of all proposals, however, is to minimize the extent of deviation while accommodating the practical demands of redistricting. No serious proposal has been put forth that suggests a tolerance of more than 25 per cent from the ideal district size, nor more than 50 per cent between the smallest and the largest district. Of course, the smaller the percentage of deviation the better the particular system of representation.

### *Compactness and Contiguity*

Two other widely accepted standards for constructing legislative districts are compactness and contiguity. Both were formerly statutory requirements for congressional

districts but they no longer are. Nevertheless, both remain as characteristics of good legislative districts. Compactness may be thought of as requiring that a legislative district be geographically arranged neatly with as little wandering as possible. As a requirement, it is intended to inhibit gerrymandering and the consequent odd-shaped districting patterns found where gerrymandering is prevalent. Contiguity as a requirement insists that districts be composed solely of continuous geographic masses and does not [fol. 225], permit a part of a district to be isolated from another part of the same district, particularly by a piece of a second district. Contiguity is perhaps the easiest characteristic of good districting to identify. It is easily ascertained by a glance at a map.

### *Geographic Features*

A more "practical" aspect of redistricting necessitates that natural geographic or topographical features be accommodated where such features tend to delineate areas of dissimilar interests and orientation. Such geographical features can be overstressed where they do not truly produce differences in area identification on the part of the inhabitants. But waterways, peninsulas, mountain ranges, and valleys often create natural boundaries for purposes of districting where the areas they set apart have developed clearly dissimilar interests and there is reason to represent such areas as they exist. The effect of geographical and topographical features cannot be carried too far in districting lest the concept of population equality become completely meaningless. It should be noted too that geographic features do not often limit the construction of successively larger districts, as for instance, congressional districts.

### *Community of Interest*

Another districting consideration concerns the community of interests of certain areas for purposes of combination into legislative districts. Economic activity creates a certain range of interests, social and political as well as economic, in a particular area of a state. Rural areas obviously have different interests from urban areas; coastal regions

from inland regions. Districting must involve a conscious effort to combine areas of like interests where possible so [fol. 226] that most of the divergent interests in a state have political representation. The extent to which combining areas of like interests can be carried is limited. There are inevitably instances where an overlapping of interests will exist in an area that is convenient in other ways for purposes of a legislative district. Even within a county, there is apt to be such an overlapping of interests that cannot be isolated for purposes of legislative representation. Nevertheless, an attempt to combine areas of like interests should be made rather than to permit or to indulge in districting schemes that seek consciously to overcome or to dilute the political power of certain interests that numerically merit legislative representation.

### *Virginia Redistricting*

Virginia's redistricting problems are clear when weighed against the considerations mentioned above. First, the task of creating legislative districts from the 98 counties and 32 independent cities of the Commonwealth is formidable because of the limited number of legislative seats that are available for distribution among them. But there is no limitation as to the number of districts that can be employed to allocate the total number of representatives. Because cities and counties have never been split or divided for purposes of legislative representation, there is obviously need for multi-member districts for counties and cities whose populations entitle them to more than 1 representative. This means that there will always be less than 100 delegate districts and less than 40 senate districts. Multi-member districts also have been used in cases where more than one county and (or) city have been joined for legislative representation. Such a multi-member, multi-county legislative district is inevitable in cases of cities entirely surrounded by counties where individual populations do not entitle such units to a whole number of representatives, [fol. 227], but which together might very well merit at least two representatives. Such a situation illustrates the dilemma of trying to isolate areas of like interests. Hence,

a rural county must be thrust together with a city, often urbanized to the highest degree, for legislative representation. Such a merging of urban and rural interests is unavoidable in Virginia although an attempt to prevent it can be made.

Geographic and topographic problems also exist in Virginia. The classic enumeration of the "five grand divisions of the Commonwealth" is relevant to legislative districting. Districting should seek to avoid overlapping these traditional areas if possible. Similarly, other limitations are imposed by geographical features of the Commonwealth. The peninsulas in the Tidewater area, the Eastern Shore, the Blue Ridge Mountains, the Shenandoah Valley, all must be considered in any districting scheme. The boundaries of the various counties and cities similarly impose limitations upon the extent to which compactness can be achieved. The problem of constructing districts that are contiguous is affected by the encirclement of many cities by surrounding counties.

Population equality is difficult to achieve in Virginia because of the tradition of integrity for the boundaries of counties and cities. Therefore, districts can be constructed only of combinations of counties and cities and not by pieces of them. This means that where the populations of contiguous counties and cities cannot be combined so as to yield convenient population totals which can be divided neatly by the fixed ratio for the state, either extreme under or overrepresentation will exist unless additional counties and cities are combined to produce a multi-member district.

Legislative districts in Virginia must be constructed by using a fixed ratio (population of the state divided by the [fol. 228] number of legislative seats to be allotted). Single member districts should contain as nearly as possible the number of persons as the fixed ratio. A multi-member district should contain as nearly as many people as can be divided by the number of representatives allotted to it so as to yield a population per representative figure close to the fixed ratio. In order to unite counties and cities in this way without reaching extreme situations of under and overrepresentation, it may be difficult not to disturb existing districts whose populations are already close to the

fixed ratio. To leave all such existing districts undisturbed may very well result in neighboring districts whose populations deviate far too much from the ideal size.

Effective redistricting in Virginia would include the following guidelines. Districts must be contiguous. This requirement is absolute since contiguity either exists, or it does not. An effort should be made to obtain compact districts. This will not be easy because of the large number of counties and cities, the peculiar shape of adjacent governmental units, and the attempt to obtain districts of nearly equal population size. Geographical and economic interests should be taken into consideration as much as possible. The districts created should be as nearly equal in population as practicable, as measured by the population per representative for each district. It is recommended that the deviation from the ideal size be as little as possible, with most deviation within 15 per cent of ideal size, and exceptions in the most difficult situations within 25 per cent. It is indeed difficult, if not impossible, to justify deviations beyond 25 per cent.

Another practical guideline to redistricting should be mentioned briefly in conclusion. First, it is deemed wise to redistrict with the least amount of disturbance to existing districts. This is a good course to follow for two reasons. It is politically wise because it takes care of legislators-incumbents in that it seeks to avoid situations in which two incumbents must compete against each other for a seat from a new legislative district. This also involves taking cognizance of incumbent places of residence. Secondly, it is less confusing for voters who can continue to identify themselves with the legislative districts and political personalities with whom they are already familiar. This objective of least disturbance to existing districts is easiest to achieve when the number of districts is fewest. Hence, in Virginia it will be more meaningful when dealing with congressional districts, and less meaningful in dealing with legislative districts.

[fol. 230]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 3

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

8/28/62 GH\*

July 17, 1961

HOUSE OF DELEGATES

*Alternative Districting Plans*

Plans A and B are submitted as alternate districting plans for the House of Delegates. Plan A contains three variations for the southwest area of the State which affect the same number of delegate seats, and four variations in the southeastern portion of the State, three of which permit an additional delegate seat to be allotted to that area at the expense of any of the several multi-member districts proposed.

In many instances, various combinations of Plans A and B can be interchanged, but not to affect the total number of representatives in a particular area.

Plan A employs the least tolerance of deviation from average district size. Plan B employs the greatest tolerance of deviations and the least disturbance to existing districts. Inevitably, some districts in both plans are identical, particularly in multi-member districts, or in unique situations such as that presented by Accomack and Northampton counties, or in situations where extreme deviations had to be corrected.

Both plans succeed in giving populous counties and cities additional representation primarily at the expense of floater districts. Plan A contains a possible maximum of four

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\* Penciled notation.

floater districts, and Plan B contains two floater districts. The floater districts in both plans contain only counties and cities that also appear in other legislative districts. Floater districts are indicated by asterisks.

Many of the districts that appear in both plans are the most logical and "natural" arrangements for purposes of representation. That is to say that they are convenient in terms of compactness of contiguity, community of interest, and population equality.

[fol. 231]

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

July 17, 1961

HOUSE OF DELEGATES

PLAN A

Total number of districts	= 57
Existing districts used	= 26
Existing districts used as nuclei for new districts	= 20
Completely new districts	= 11

Plan A is conceived as a districting scheme that permits the least tolerance in deviations from average district size, and hence was unconcerned with preserving existing districts.

Plan A incorporates alternative districting arrangements involving 11 delegate seats in the southwestern portion of the State, and alternate districting arrangements in the southern portion of the State that permit that area to have an additional representative, albeit at the expense of multi-member districts elsewhere.


Plan A also contains alternate possibilities for some counties and cities insofar as either a multi-member dis-

trict or single-member districts can be employed. Similar possibilities for the use of floater districts are suggested.

The alternative districting arrangements for certain areas are indicated by A-1, A-2, and A-3, or AA-1, AA-2, AA-3, and AA-4 for each group of counties and cities, with the most preferable alternative for each area within the standards of Plan A, cited as A-1. The subsequently appearing A-2 and A-3 are offered as alternatives. Solid lines across the page delineate the alternate districting arrangements.

Extremes of over and underrepresentation in Plan A are 1.17 and .83.

PLAINTIFFS' EXHIBIT 3 (Cont.)

See Opposite 

# HOUSE OF DELEGATES

## PLAN A

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
A1 Augusta Highland Staunton Waynesboro	2	39,255	1.01
✓ Halifax South Boston	1	39,611	1.00
Henry 3 Patrick Martinsville	2	37,207	1.07
4 Newport News	3	37,887	1.05
Northumberland Westmoreland 5 Lancaster Richmond County	1	36,776	1.08
6 Montgomery Radford	1	42,294	.94
7 Norfolk County South Norfolk	2	36,823	1.08
8 ALBEMARLE GREENE CHARLOTTESVILLE FLUVANNA	2	36,169	1.10
9 Madison Culpeper Orange RAPPAHANNOCK	1	41,543	.96
10 Fairfax Falls Church	7	40,742	.97
11 Arlington	4	40,850	.97
12 Alexandria	2	45,512	.87
13 Norfolk	7	43,553	.91
14 Portsmouth	3	38,258	1.04
15 Princess Anne Virginia Beach	2	42,609	.93

[fol. 232]

## PLAN A (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
16 Richmond	6	36,659	1.08
17 Hampton	2	44,629	.89
18 Henrico	3	39,113	1.01
19 Chesterfield Colonial Heights	2	40,392	.98
20 Pittsylvania	1	58,296	.68
21 Danville	1	46,577	.85
22 PITTSYLVANIA *DANVILLE	1	104,873	.38 1.06 1.23
23 HOPEWELL PRINCE GEORGE	1	38,165	1.04
24 PETERSBURG	1	36,750	1.08
25 JAMES CITY YORK WILLIAMSBURG	1	39,954	.99
26 Gloucester Mathews Middlesex KING & QUEEN ESSEX	1	37,938	1.05
27 Rockingham Harrisonburg SHENANDOAH	2	37,113	1.07
28 FREDERICK WINCHESTER	1	37,051	1.07
29 CLARKE Warren Page	1	38,169	1.04
30 Loudoun PRINCE WILLIAM	2	37,351	1.06
31 Roanoke City	2	48,555	.82

[fol. 233]

PLAN A (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
32 Roanoke County	1	61,693	.64
	and		
33 ROANOKE CITY ROANOKE COUNTY	1	158,803	.25 1.07 .89
	or		
Roanoke County	2	30,846	1.29
34 Accomack Northampton	1	47,601	.83
35 Spotsylvania Fredericksburg LOUISA	1	40,417	.98
36 STAFFORD FAUQUIER	1	40,942	.97
37 CHARLES CITY NEW KENT HANOVER	1	37,546	1.06
38 KING GEORGE CAROLINE KING WILLIAM	1	37,531	1.06
39 Rockbridge Bath Buena Vista	1	35,674	1.11
40 Alleghany Clifton Forge Covington BOTETOURT	1	45,173	.88
41 FLOYD Franklin	1	36,387	1.09
42 Amherst Nelson	1	35,705	1.11
43 Lynchburg	1	54,790	.72

[fol. 234]

PLAN A (continued)

	<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
44	BEDFORD CAMPBELL	1	63,986	.62
45	*LYNCHBURG BEDFORD CAMPBELL	1	118,776	.33 1.05 .95 .95
	or			
	LYNCHBURG BEDFORD CAMPBELL	3	39,592	1.00

PLAN A-1

46	LEE Wise Norton	2	37,199	1.07
47	SCOTT Washington Bristol	2	40,516	.98
48	Buchanan Dickenson RUSSELL	2	41,612	.95
49	TAZEWELL Smyth	2	37,928	1.05
50	Grayson Galax CARROLL	1	45,822	.87
1 51	CRAIG Giles Bland WYTHE PULASKI	2	37,895	1.05

## PLAN A (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
PLAN A-2			
Washington Bristol	1	55,220	.72 .99
*Washington Bristol LEE SCOTT	1	106,857	.37
LEE SCOTT	1	51,637	.77 1.04
Wise Norton	1	48,575	.82
DICKENSON RUSSELL	1	46,501	.85
PULASKI GILES CRAIG	1	47,833	.83
CARROLL GRAYSON GALAX WYTHE	2	33,898	1.17
Smyth BLAND	1	37,048	1.07
Tazewell	1	44,791	.89
Buchanan	1	36,724	1.08

## PLAN A (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
PLAN A-3			
LEE SCOTT RUSSELL	2	38,963	1.02
Wise Norton DICKENSON	2	34,388	1.15
Washington Bristol SMYTH	2	43,143	.92
CRAIG Giles Bland WYTHE PULASKI	2	37,895	1.05
Grayson Galax CARROLL	1	45,822	.87
Tazewell	1	44,791	.89
Buchanan	1	36,724	1.08

PLAN A (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
PLAN AA-1			
33 52 ISLE OF WIGHT Southampton	1	44,359	.89
53 Nansemond Suffolk	1	43,975	.90
54 SURRY SUSSEX DINWIDDIE	1	40,814	.97
55 Mecklenburg CHARLOTTE	1	44,796	.89
56 PRINCE EDWARD Appomattox Buckingham Cumberland	1	40,506	.98
57 Brunswick GREENSVILLE Lunenburg	1	46,457	.88
58 Nottoway Amelia Powhatan GOOCHLAND	1	38,909	1.02

PLAN AA-2 (with additional district)

CHARLOTTE Lunenburg MECKLENBURG Brunswick	2	37,549	1.06
Nansemond Suffolk SOUTHAMPTON	2	35,585	1.11
DINWIDDIE Sussex SURRY ISLE OF WIGHT Greensville	2	37,066	1.07

[fol. 238]

PLAN A (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
PLAN AA-3 (with additional district)			
Nansemond Suffolk Isle of Wight SURRY	2	33,679	1.18
SUSSEX Southampton	1	39,606	1.00
GREENSVILLE BRUNSWICK	1	33,934	1.17
DINWIDDIE NOTTOWAY	1	37,324	1.06
Macklenburg LUNENBURG	1	43,951	.90
Charlotte Prince Edward APPOMATTOX	1	36,637	1.08
BUCKINGHAM CUMBERLAND GOOCHLAND POWHEATAN AMELIA	1	41,005	.97

[fol. 239]

## PLAN A (continued)

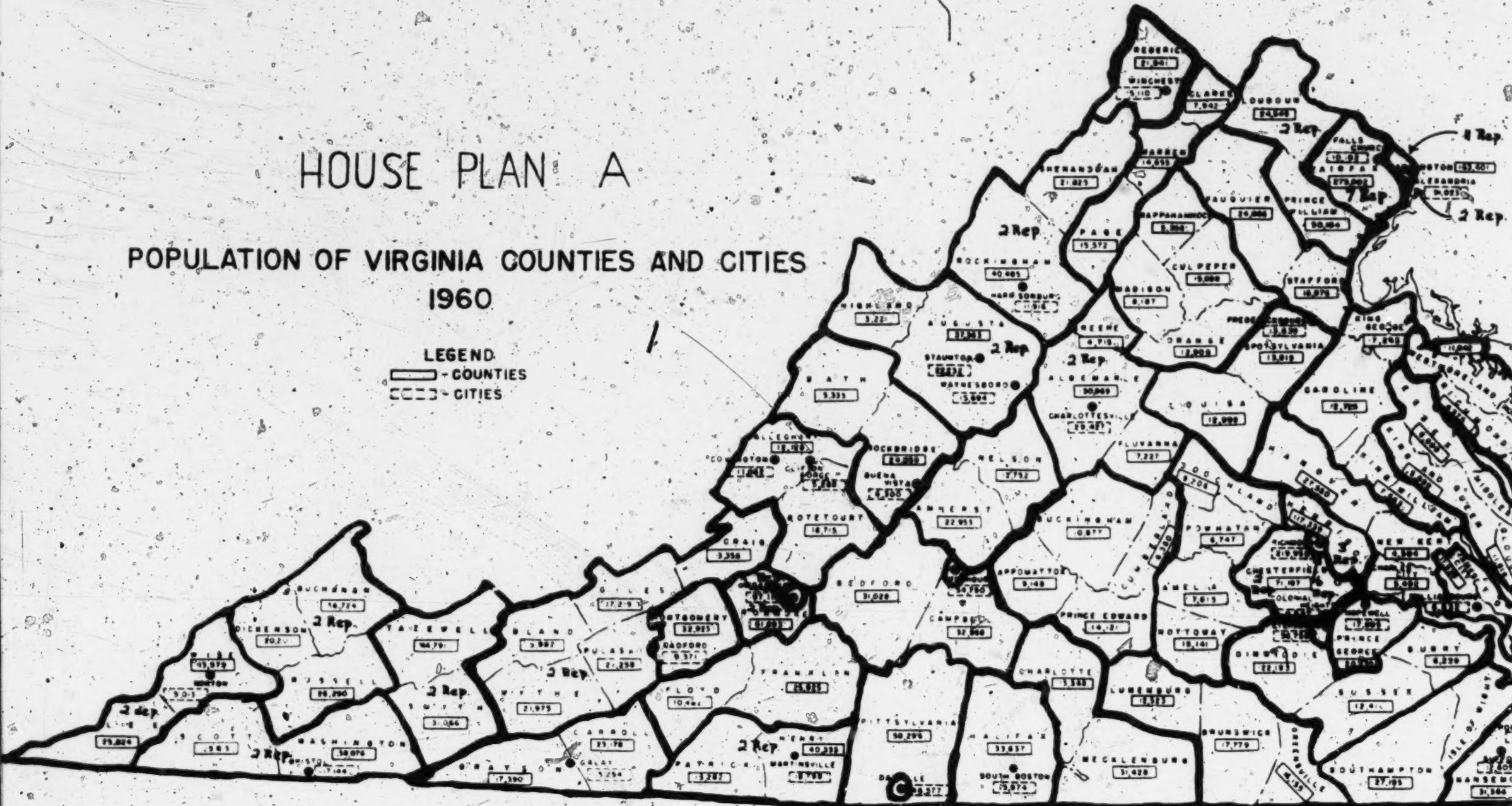
<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
PLAN AA-4 (with additional district)			
Nansemond Suffolk Isle of Wight SURRY SUSSEX SOUTHAMPTON	3	35,655	1.11
DINWIDDIE NOTTOWAY	1	37,324	1.06
Greensville BRUNSWICK MECKLENBURG Lunenburg	2	38,942	1.02
Charlotte Prince Edward APPOMATTOX	1	36,637	1.08
BUCKINGHAM CUMBERLAND GOOCHLAND POWHATAN AMELIA	1	41,005	.97

[fol. 240]

## HOUSE PLAN A

POPULATION OF VIRGINIA COUNTIES AND CITIES  
1960

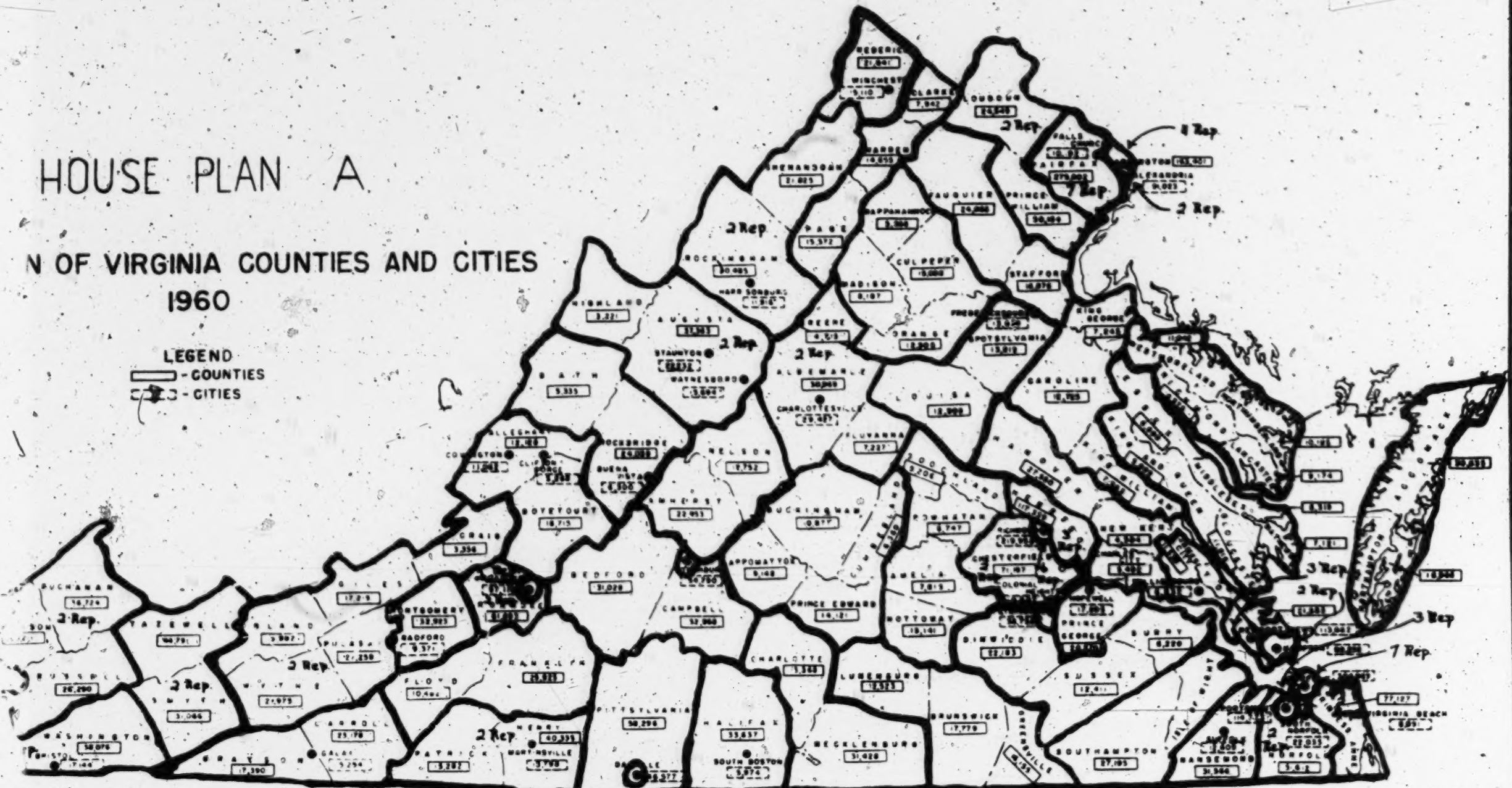
LEGEND  
 — COUNTIES  
 — CITIES



## HOUSE PLAN A

N OF VIRGINIA COUNTIES AND CITIES  
1960

LEGEND  
 — COUNTIES  
 — CITIES



1960  
Census  
of  
Population

ADVANCE REPORTS

FINAL POPULATION COUNTS

November 30, 1960

PC(A1)-48

8/28/62 JH

Virginia

(These figures supersede the preliminary counts for the same areas published in the PC(P1) and PC(P2) series of reports. The present series consists of 52 reports--one each for the United States, 50 States, and the District of Columbia--which are numbered in alphabetical order rather than in order of publication)

The official population count of the State as of April 1, 1960, was 3,966,949. This is a gain of 648,269, or 19.5 percent, over the 3,318,680 inhabitants of the State in 1950.

This report presents final 1960 Population Census statistics on the number of inhabitants of the State and its counties or comparable areas. In addition, figures are given for minor civil divisions, incorporated or unincorporated places, and for the population of the State and its counties classified by urban-rural residence. Comparable figures from earlier censuses appear in Volume I of the reports of the 1950 Census of Population.

The figures shown here are being issued in advance of their publication in Final Report PC(1)-48A, which will provide additional information on the number and geographic distribution of the inhabitants of this State. The final report will be issued within the next few months.

An outline of the 1960 Population Census publication program may be obtained free of charge from the Bureau of the Census, Washington 25, D.C., or any U.S. Department of Commerce Field Office.

Urban-rural residence.---According to the definition adopted for use in the 1960 Census, the urban population comprises all persons living in (a) places of 2,500 inhabitants or more incorporated as cities, boroughs, villages, and towns (except towns in New England, New York, and Wisconsin); (b) the densely settled urban fringe, whether incorporated or unincorporated, of urbanized areas (see next paragraph); (c) towns in New England and townships in New Jersey and Pennsylvania which contain no incorporated municipalities as subdivisions and have either 25,000 inhabitants or more or a population of 2,500 to 25,000 and a density of 1,500 persons or more per square mile; (d) counties in States other than the New England States, New Jersey, and Pennsylvania that have no incorporated municipalities within their boundaries and have a density of 1,500 persons or more per square mile; and (e) unincorporated places of 2,500 inhabitants or more. The population not classified as urban constitutes the rural population.

Urbanized areas.---An urbanized area contains at least one city of 50,000 inhabitants or more and the surrounding closely settled area, whether incorporated or unincorporated, that meets specified criteria relating to land

[fol. 242]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 4

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U.S. DEPARTMENT OF COMMERCE, Frederick H. Mueller, Secretary  
BUREAU OF THE CENSUS, Robert W. Burgess, Director

For sale by the Bureau of the Census, Washington 25, D.C., and U.S. Department of Commerce Field Offices. 15 cents. Complete set of 52 reports, \$6.25.



use or population density. There are a few urbanized areas where there are "twin central cities" that have a combined population of at least 50,000.

Minor civil divisions.--To the primary political divisions into which counties or comparable areas are divided, the Bureau applies the general term "minor civil divisions." From State to State they are known variously as townships, towns, judicial districts, election precincts, and the like. In some States, incorporated places are minor civil divisions in their own right and in other States they are subordinate to the minor civil division in which they are located, or the pattern is mixed--some incorporated places are independent minor civil divisions, and others are subordinate to the minor civil division.

Places.--The term "place" as used in reports of the population censuses refers to a concentration of population, regardless of the

existence of legally prescribed limits, powers, or functions. Most of the places listed are incorporated as cities, towns, villages, or boroughs, however. In addition, unincorporated places of 1,000 inhabitants or more are also presented. The towns in New England and townships in New Jersey and Pennsylvania recognized as urban are also counted as places.

Incorporated places.--Political units recognized as incorporated places in the reports of the census are those which are incorporated as cities, boroughs, towns, and villages with the exception that towns are not recognized as incorporated places in the New England States, New York, and Wisconsin.

Unincorporated places.--As in the 1950 Census, the Bureau has delineated boundaries for densely settled population centers without corporate limits. All such places of 1,000 inhabitants or more are shown in tables 2 and 3.

Table 1.--POPULATION OF COUNTIES AND INDEPENDENT CITIES, URBAN AND RURAL: 1960

(Percent not shown where less than 0.1)

Counties and independent cities	Total population	Urban				Rural	
		Total	Percent of total population	Urbanized areas	Other urban territory	Total	Places of 1,000 to 2,500
THE STATE . . . . .	3 966 949	2 204 913	55.6	1 707 786	497 127	1 762 026	108 925
ACCOMACK . . . . .	30 635	...	...	...	...	30 635	3 890
ALBEMARLE . . . . .	30 969	...	...	...	...	30 969	...
ALLEGHANY . . . . .	12 128	...	...	...	...	12 128	...
AMELIA . . . . .	7 815	...	...	...	...	7 815	...
ANNEST . . . . .	22 953	2 146	9.3	2 146	...	20 807	1 200
APPOMATTOX . . . . .	9 148	...	...	...	...	9 148	1 184
ARLINGTON . . . . .	163 401	163 401	100.0	163 401	...	...	...
AUGUSTA . . . . .	37 363	...	...	...	...	37 363	...
BATH . . . . .	5 333	...	...	...	...	5 333	...
BEDFORD . . . . .	51 028	5 921	19.1	...	5 921	25 107	...
BLAND . . . . .	5 982	...	...	...	...	5 982	...
BOTETOURT . . . . .	16 715	...	...	...	...	16 715	1 349
BRUNSWICK . . . . .	17 779	...	...	...	...	17 779	1 941
BUCHANAN . . . . .	36 724	...	...	...	...	36 724	3 356
BUCKINGHAM . . . . .	10 877	...	...	...	...	10 877	...
CAMPBELL . . . . .	32 958	5 682	17.2	2 383	3 299	27 276	1 070
CAROLINE . . . . .	12 725	...	...	...	...	12 725	...
CARROLL . . . . .	23 178	...	...	...	...	23 178	...
CHARLES CITY . . . . .	5 492	...	...	...	...	5 492	...
CHARLOTTE . . . . .	13 368	...	...	...	...	13 368	...
CHESTERFIELD . . . . .	71 197	33 140	46.5	30 142	2 998	38 057	1 290
CLARKE . . . . .	7 942	...	...	...	...	7 942	1 645
CRAIG . . . . .	3 356	...	...	...	...	3 356	...
CULPEPER . . . . .	15 088	...	...	...	...	15 088	2 412
CUMBERLAND . . . . .	6 360	...	...	...	...	6 360	...
DICKENSON . . . . .	20 211	...	...	...	...	20 211	1 400
DINWIDDIE . . . . .	22 183	...	...	...	...	22 183	...
ESSEX . . . . .	6 690	...	...	...	...	6 690	1 086
FAIRFAX . . . . .	275 002	214 456	78.0	200 871	13 585	60 546	1 960
FAUQUIER . . . . .	24 066	3 522	14.6	...	3 522	20 544	...
FLOYD . . . . .	10 462	...	...	...	...	10 462	...
FLUVANNA . . . . .	7 227	...	...	...	...	7 227	...
FRANKLIN . . . . .	25 925	...	...	...	...	25 925	1 412
FREDERICK . . . . .	21 941	...	...	...	...	21 941	...
GILES . . . . .	17 219	2 508	14.6	...	2 508	14 711	3 306
GLOUCESTER . . . . .	11 919	...	...	...	...	11 919	...
GOCHLAND . . . . .	9 206	...	...	...	...	9 206	...
GRAYSON . . . . .	17 390	...	...	...	...	17 390	1 039
GREENE . . . . .	4 715	...	...	...	...	4 715	...
GREENSVILLE . . . . .	16 155	5 535	34.3	...	5 535	10 620	...
HALIFAX . . . . .	33 637	...	...	...	...	33 637	...
HANOVER . . . . .	27 550	2 773	10.1	...	2 773	24 777	...
HENRICO . . . . .	117 339	83 338	71.0	83 338	...	34 001	1 380
HENRY . . . . .	40 335	6 734	16.7	...	6 734	33 601	1 499
HIGHLAND . . . . .	3 221	...	...	...	...	3 221	...
ISLE OF WIGHT . . . . .	17 164	...	...	...	...	17 164	...
JAMES CITY . . . . .	11 539	...	...	...	...	11 539	...
KING AND QUEEN . . . . .	5 889	...	...	...	...	5 889	...
KING GEORGE . . . . .	7 243	...	...	...	...	7 243	...
KING WILLIAM . . . . .	7 563	...	...	...	...	7 563	1 678
LANCASTER . . . . .	9 174	...	...	...	...	9 174	...
LEE . . . . .	25 824	...	...	...	...	25 824	1 799
LOUDOUN . . . . .	24 549	2 869	11.7	...	2 869	21 680	1 419
LOUISA . . . . .	12 959	...	...	...	...	12 959	...
LUNENBERG . . . . .	12 523	...	...	...	...	12 523	2 925
MADISON . . . . .	8 187	...	...	...	...	8 187	...
MATHEWS . . . . .	7 121	...	...	...	...	7 121	...
MECKLENBURG . . . . .	31 428	5 776	18.4	...	5 776	25 652	1 530
MIDDLESEX . . . . .	6 319	...	...	...	...	6 319	...
MONTGOMERY . . . . .	32 923	10 723	32.6	...	10 723	22 200	...
NANSEMONG . . . . .	31 366	2 636	8.4	...	2 636	28 730	6 060
NELSON . . . . .	12 752	...	...	...	...	12 752	...
NEW KENT . . . . .	4 504	...	...	...	...	4 504	...
NORFOLK . . . . .	51 612	28 135	54.5	28 135	...	23 477	...
NORTHAMPTON . . . . .	16 966	...	...	...	...	16 966	3 607
NORTHUMBERLAND . . . . .	10 185	...	...	...	...	10 185	...
NOTTOWAY . . . . .	15 141	3 659	24.2	...	3 659	11 482	2 012
ORANGE . . . . .	12 900	2 955	22.9	...	2 955	9 945	1 109
PAGE . . . . .	15 572	3 014	19.4	...	3 014	12 558	2 878
PATRICK . . . . .	15 282	...	...	...	...	15 282	...

[Vol. 244]

Table 1. POPULATION OF COUNTIES AND INDEPENDENT CITIES, URBAN AND RURAL: 1960--Con.

(Percent not shown where less than 0.1)

Counties and independent cities	Total population	Urban				Rural		
		Total	Percent of total population	Urbanized areas	Other urban territory	Total	Places of 1,000 to 2,500	Other rural territory
PITTSYLVANIA. . . . .	58 296	...	...	...	...	58 296	3 679	54 617
POPMATAN. . . . .	6 747	...	...	...	...	6 747	...	6 747
PRINCE EDWARD. . . . .	14 121	4 293	30.4	...	4 293	9 828	...	9 828
PRINCE GEORGE. . . . .	20 270	...	...	...	...	20 270	...	20 270
PRINCE WILLIAM. . . . .	50 164	11 845	23.6	...	11 845	38 319	2 383	35 936
PRINCESS ANNE. . . . .	76 124	42 717	56.1	37 010	5 707	33 407	7 202	26 205
PULASKI. . . . .	27 258	10 469	38.4	...	10 469	16 789	3 908	12 881
RAPPAHANNOCK. . . . .	5 368	...	...	...	...	5 368	...	5 368
RICHMOND. . . . .	6 375	...	...	...	...	6 375	...	6 375
ROANOKE. . . . .	61 693	27 642	44.8	27 642	...	34 051	...	34 051
ROCKBRIDGE. . . . .	24 039	7 537	31.4	...	7 537	16 502	1 091	15 411
ROCKINGHAM. . . . .	40 485	...	...	...	...	40 485	3 321	37 164
RUSSELL. . . . .	26 290	...	...	...	...	26 290	3 521	22 769
SCOTT. . . . .	25 813	...	...	...	...	25 813	3 416	22 397
SHENANDOAH. . . . .	21 825	...	...	...	...	21 825	4 511	17 314
SHYTH. . . . .	31 066	10 822	34.8	...	10 822	20 244	1 169	19 075
SOUTHAMPTON. . . . .	27 195	7 264	26.7	...	7 264	19 931	...	19 931
SPOTSYLVANIA. . . . .	13 819	...	...	...	...	13 819	...	13 819
STAFFORD. . . . .	16 876	...	...	...	...	16 876	1 478	15 398
SUMRY. . . . .	6 220	...	...	...	...	6 220	...	6 220
SUSSEX. . . . .	12 411	...	...	...	...	12 411	2 816	9 795
TAZENELL. . . . .	44 791	12 198	27.2	...	12 198	32 593	1 313	31 280
WARREN. . . . .	14 655	7 949	54.2	...	7 949	6 706	...	6 706
WASHINGTON. . . . .	38 076	5 165	13.6	...	5 165	32 911	2 892	30 019
WESTMORELAND. . . . .	11 042	...	...	...	...	11 042	1 769	9 273
WISE. . . . .	43 579	7 302	16.8	...	7 302	36 277	7 218	29 059
WYTHE. . . . .	21 975	5 634	25.6	...	5 634	16 341	...	16 341
YORK. . . . .	21 583	5 954	27.6	5 954	...	15 629	...	15 629
INDEPENDENT CITIES								
ALEXANDRIA. . . . .	91 023	91 023	100.0	91 023	...	...	...	...
BRISTOL. . . . .	17 144	17 144	100.0	...	17 144	...	...	...
BUENA VISTA. . . . .	6 300	6 300	100.0	...	6 300	...	...	...
CHARLOTTESVILLE. . . . .	29 427	29 427	100.0	...	29 427	...	...	...
CLIFTON FORGE. . . . .	5 268	5 268	100.0	...	5 268	...	...	...
COLONIAL HEIGHTS. . . . .	9 587	9 587	100.0	...	9 587	...	...	...
COVINGTON. . . . .	11 062	11 062	100.0	...	11 062	...	...	...
DANVILLE. . . . .	46 577	46 577	100.0	...	46 577	...	...	...
FALLS CHURCH. . . . .	10 192	10 192	100.0	10 192	...	...	...	...
FREDERICKSBURG. . . . .	13 639	13 639	100.0	...	13 639	...	...	...
GALAX. . . . .	5 254	5 254	100.0	...	5 254	...	...	...
HAMPTON. . . . .	89 258	89 258	100.0	89 258	...	...	...	...
HARRISONBURG. . . . .	11 916	11 916	100.0	...	11 916	...	...	...
HOPWELL. . . . .	17 895	17 895	100.0	...	17 895	...	...	...
LYNCHBURG. . . . .	54 790	54 790	100.0	54 790	...	...	...	...
MARTINSVILLE. . . . .	18 798	18 798	100.0	...	18 798	...	...	...
NEWPORT NEWS. . . . .	113 662	113 662	100.0	113 662	...	...	...	...
NORFOLK. . . . .	305 872	305 872	100.0	305 872	...	...	...	...
NORTON. . . . .	4 996	4 996	100.0	...	4 996	...	...	...
PETERSBURG. . . . .	36 750	36 750	100.0	...	36 750	...	...	...
PORTSMOUTH. . . . .	114 773	114 773	100.0	114 773	...	...	...	...
RADFORD. . . . .	9 371	9 371	100.0	...	9 371	...	...	...
RICHMOND. . . . .	219 958	219 958	100.0	219 958	...	...	...	...
ROANOKE. . . . .	97 110	97 110	100.0	97 110	...	...	...	...
SOUTH BOSTON. . . . .	5 974	5 974	100.0	...	5 974	...	...	...
SOUTH NORFOLK. . . . .	22 035	22 035	100.0	22 035	...	...	...	...
STAUNTON. . . . .	22 232	22 232	100.0	...	22 232	...	...	...
SUFFOLK. . . . .	12 609	12 609	100.0	...	12 609	...	...	...
VIRGINIA BEACH. . . . .	8 091	8 091	100.0	8 091	...	...	...	...
WAYNESBORO. . . . .	15 694	15 694	100.0	...	15 694	...	...	...
WILLIAMSBURG. . . . .	6 832	6 832	100.0	...	6 832	...	...	...
WINCHESTER. . . . .	15 110	15 110	100.0	...	15 110	...	...	...

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

July 17, 1961

HOUSE

PLAN B

Total number of districts	= 61
Existing districts used	= 34
Existing districts used as nuclei for new districts	= 15
Completely new districts	= 12

Plan B permits the greatest tolerance in the deviation of district size from the average district size. With few exceptions, the index figures are not less than .75 or greater than 1.25 and those existing districts which fall under this range were left untouched wherever possible.

Extremes of over or underrepresentation in the Plan B are 1.35 and .61.

8/28/62 *JS*

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 5

[fol. 246]

## HOUSE OF DELEGATES

## PLAN B

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Augusta Highland Staunton Waynesboro	2	39,255	1.01
Halifax South Boston	1	39,611	1.00
Henry Patrick Martinsville	2	37,207	1.07
Newport News	3	37,887	1.05
Northumberland Westmoreland Lancaster Richmond County	1	36,776	1.08
Montgomery Radford CRAIG	1	45,650	.87
Norfolk County South Norfolk	2	36,823	1.08
Albemarle Greene	1	35,684	1.11
Charlottesville	1	29,427	1.35
or Albemarle Greene Charlottesville	2	32,511	1.22
Madison Culpeper Orange	1	36,175	1.10
Fairfax Falls Church	5	57,039	.70
Arlington	4	40,850	.97
Alexandria	2	45,511	.87
Norfolk	7	43,553	.91
Portsmouth	3	38,258	1.04

[fol. 247]

PLAN B (continued)

2

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Princess Anne Virginia Beach	2	42,609	.93
Richmond	7	31,422	1.26
Hampton	2	44,629	.89
HENRICO	3	37,113	1.07
CHESTERFIELD COLONIAL HEIGHTS	2	40,392	.98
Pittsylvania	1	58,296	.68
Danville	1	46,577	.85
*PITTSYLVANIA DANVILLE	1	104,873	.98 1.06 1.23
or			
PITTSYLVANIA DANVILLE	3	34,957	1.13
Prince George Surry Hopewell	1	44,385	.89
Petersburg Dinwiddie SUSSEX	2	35,672	1.11
JAMES CITY YORK WILLIAMSBURG	1	39,954	.99
Gloucester Mathews Middlesex ESSEX	1	32,049	1.24
Rockingham Harrisonburg SHENANDOAH	2	37,113	1.07
Clark Frederick Winchester	1	44,993	.88

[fol. 248]

PLAN B (continued)

3

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Page Warren RAPPAHANNOCK	1	35,595	1.11
LOUDOUN PRINCE WILLIAM	2	37,357	1.06
Roanoke City	2	48,555	.82
Roanoke County	1	61,693	.64
*ROANOKE CITY ROANOKE COUNTY	1	158,803	.25 1.07 .89
Accomack Northampton	1	47,601	.83
Spotsylvania Fredericksburg LOUISA	1	40,417	.98
FAUQUIER STAFFORD	1	40,942	.97
HANOVER NEW KENT CHARLES CITY	1	37,546	1.06
CAROLINE KING GEORGE KING & QUEEN KING WILLIAM	1	33,420	1.19
Rockbridge Bath Buena Vista	1	35,674	1.11
Alleghany Clifton Forge Covington BOTETOURT	1	45,173	.88
FRANKLIN FLOYD	1	36,387	1.09
Nelson Amherst	1	35,705	1.11
Lynchburg	1	54,790	.72
(or 2 with Campbell or Bedford)		43,874 42,909	.90 .92

[fol. 249]

PLAN B (continued)

4

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Bedford	1	31,028	1.28
Campbell	1	32,958	1.20
Wise Norton LEE	2	37,199	1.07
Washington Bristol SCOTT	2	40,516	.98
Buchanan	1	36,724	1.08
DICKENSON RUSSELL	1	46,501	.85
Tazewell	1	44,791	.89
Smyth	1	31,066	1.28
Grayson Galax PULASKI CARROLL	2	36,540	1.09
WYTHE Bland Giles	1	45,176	.88
Southampton ISLE OF WIGHT	1	44,359	.89
Nansemond Suffolk	1	43,975	.90
Mecklenburg	1	31,428	1.26
Prince Edward Charlotte LUNENBURG	1	40,012	.99
Buckingham Appomattox Cumberland FLUVANNA	1	33,612	1.18
BRUNSWICK GREENSVILLE	1	33,934	1.17

[fol. 250]

123  
250

PLAN B (continued)

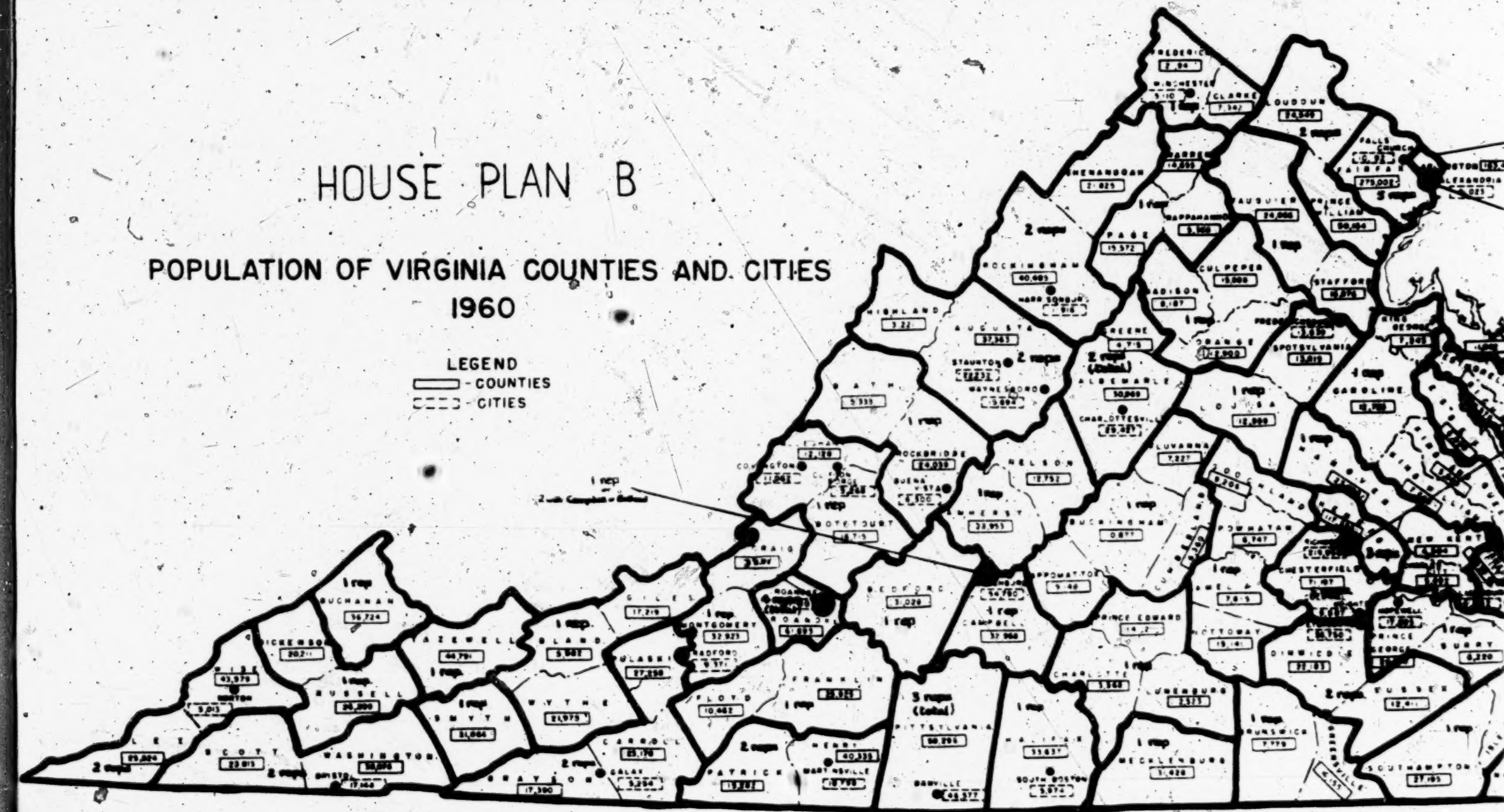
5

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Nottoway Amelia Powhatan GOOCHLAND	1	38,909	1.02

## HOUSE PLAN B

POPULATION OF VIRGINIA COUNTIES AND CITIES  
1960

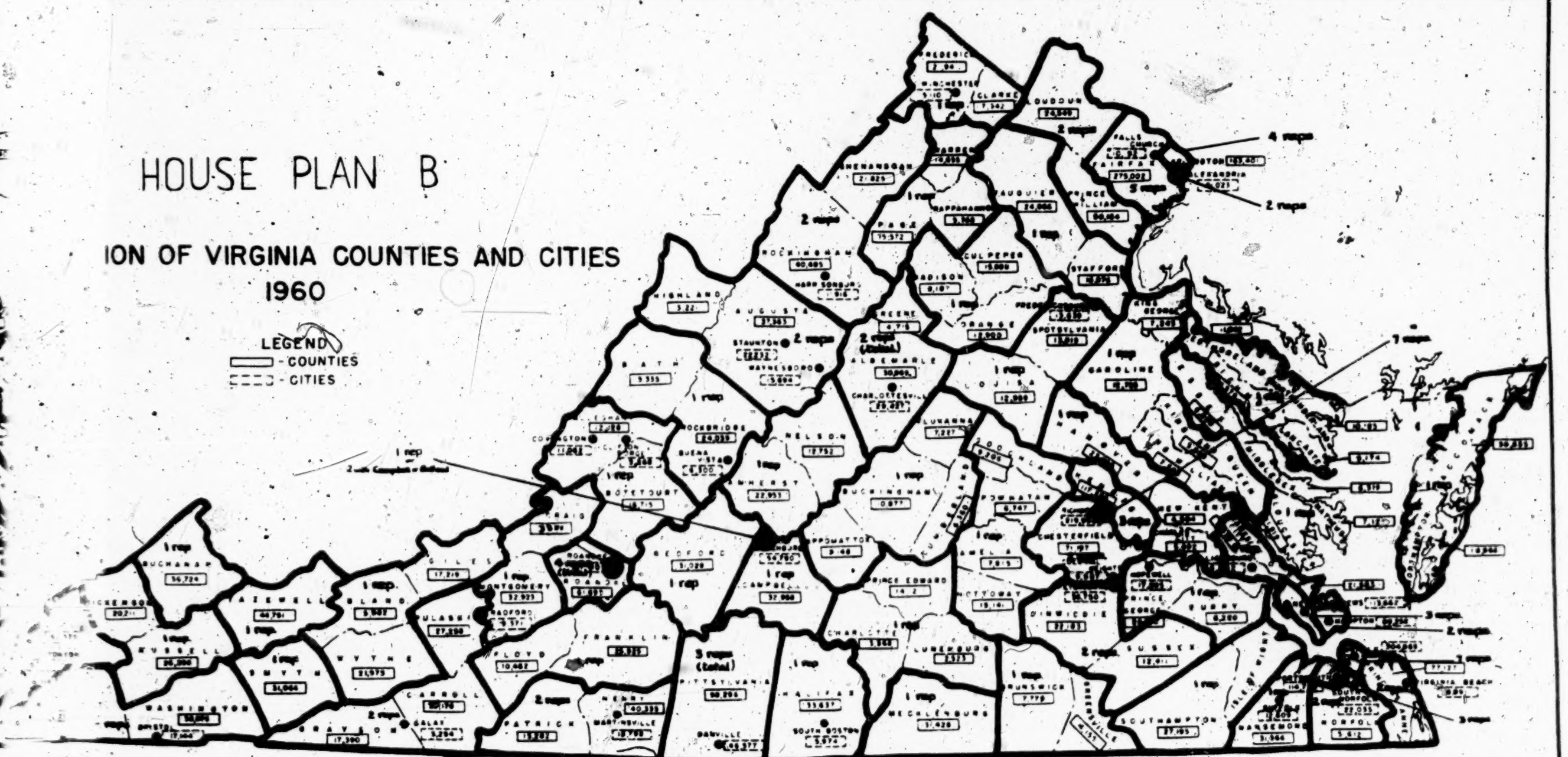
LEGEND  
 — COUNTIES  
 - - - CITIES



## HOUSE PLAN B

ION OF VIRGINIA COUNTIES AND CITIES  
1960

LEGEND  
 — COUNTIES  
 - - - CITIES



[fol. 253]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

## PLAINTIFFS' EXHIBIT 6

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

8/28/62 GH\*

August 7, 1961

HOUSE  
PLAN B

SUMMARY OF CHANGES TO  
EXISTING HOUSE DISTRICTS

1. Existing districts retained by House Plan B with the same number of representatives are:

Augusta	2	Charlottesville	1
Highland		Madison	1
Staunton		Culpeper	
Waynesboro		Orange	
Halifax	1	Clarke	1
South Boston		Frederick	
Henry	2	Winchester	
Patrick		Nelson	1
Martinsville		Amherst	
Albemarle	1	Campbell	1
Greene			

\* Penciled notations.

Prince George 1  
 Surry  
 Hopewell

Accomack 1  
 Northampton

Newport News 3

Northumberland 1

Westmoreland

Lancaster

Richmond County

Norfolk County 2

South Norfolk

[fol. 254]

Nansemond 1  
 Suffolk

Mecklenburg 1

Richmond 7 220,000\*

Lynchburg 1

Rockbridge 1

Bath

Buena Vista

Buchanan 1

Tazewell 1

Smyth 1

Bedford 1

Roanoke City 2

Danville 1

Roanoke County 1

2. Existing districts retained but with changes in number of representatives:

Princess Anne 1 to 2  
 Virginia Beach

Hampton 1 to 2

Henrico 1 to 3

Chesterfield 1 to 2

Colonial Heights

Fairfax County 2 to 3

Falls Church

Fairfax City 285,000\*

Norfolk 6 to 7

Arlington 3 to 4

Alexander 1 to 2

Portsmouth 2 to 3

Pittsylvania 2 to 1

*Italicized numerals underscored in original copy.*

## 3. Existing districts that form the nuclei of new districts:

Montgomery Radford	added Craig	1
Petersburg Dinwiddie	added Sussex	2
Gloucester Mathews Middlesex	added Essex	1
Rockingham Harrisonburg	added Shenandoah	2
Page Warren	added Rappahannock	1
Spotsylvania Fredericksburg	added Louisa	1
Alleghany Clifton Forge Covington [fol. 255]	added Botetourt	1
Wise Norton	added Lee	2
Washington Bristol	added Scott	2
Bland Giles	added Wythe	1
Grayson Galax	added Pulaski and Carroll and gained 1 representative	2
Southampton	added Isle of Wight	1
Prince Edward Charlotte	added Lunenburg	1

Buckingham	added Fluvanna	1
Appomattox		
Cumberland		

Nottoway	added Goochland	1
Amelia		
Powhatan		

#### 4. New Districts created :

Pittsylvania	floaters seat	1
Danville		

James City	deleted Charles City and New	1
York	Kent from present district	
Williamsburg		

Loudoun	present district by itself	2
Prince William	with Stafford in present district	

Roanoke City	floaters seat	1
Roanoke County		

Fauquier	with Rappahannock in present	1
	district	

Stafford	with Prince William in present	
	district	

Hanover	with King William in present	1
	district	

New Kent )	deleted from district with James	
Charles City)	City, York, and Williamsburg	

[fol. 256]

Caroline )		
King George )	with Essex in present district	1
King and Queen)		

King William	with Hanover in present district	
--------------	----------------------------------	--

Franklin	present district by itself	1
Floyd	with Carroll in present district	

Dickenson	with Buchanan in present floater 1 district	
Russell	present district by itself	
Brunswick	with Lunenburg in present district	1
Greenville	with Sussex in present district	

5. Existing districts that do not appear in House Plan B:

Botetourt—to Alleghany—Clifton Forge—Covington  
Craig—to Montgomery—Radford

Greenville—combined with Brunswick  
Sussex—to Petersburg—Dinwiddie

Shenandoah—to Rockingham—Harrisonburg

Fauquier—combined with Stafford  
Rappahannock—to Page—Warren

Lee—to Wise—Norton

Scott—to Washington—Bristol

Wythe—to Bland—Giles

Brunswick—combined with Greenville  
Lunenburg—to Prince Edward—Charlotte

Fluvanna—to Buckingham—Appomattox—Cumberland

Goöchland—to Nottoway—Amelia—Powhatan

Louisa—to Spotsylvania—Fredericksburg

Loudoun—combined with Prince William

Hanover—combined with New Kent and Charles City  
King William—combined with Caroline, King George,  
King & Queen

Floyd—combined with Franklin

Carroll—combined with Pulaski and added to Grayson  
and Galax

Franklin—combined with Floyd

[fol. 257]

Buchanan )

Dickenson)—floater district eliminated

Accomack—floater district eliminated  
Northampton

Chesterfield )  
Henrico )—floater district eliminated  
Colonial Heights)

Isle of Wight—to Southampton  
Nansemond)

Suffolk ) floater seat made-only district

Amherst )

Lynchburg) floater district eliminated

6. Areas of the Commonwealth that gain representation are:

Arlington, Alexandria, Fairfax area: given 11 seats  
(has 6 now)

Norfolk, Portsmouth, Princess Anne area: given 12  
seats.(has 9 now)

Newport News, Hampton area: given 5 seats (has 4  
now)

Richmond, Henrico, Chesterfield, Colonial Heights  
area: given 12 seats (has 10 now)

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

8/28/62 JH

July 17, 1961

STATE SENATE

Alternate Districting Plans

Plans A, B, and C are submitted as alternate districting plans for the State Senate. Plan A has an alternative plan within it for the southwest area of the State.

The alternative plans can be used in combination with each other for certain purposes, namely, in order to free a representative for assignment elsewhere. This arises from their treatment of the southwestern portion of the State and their treatment of the eastern portion.

Plans A, B, and C all suggest merely 1 Senator for Arlington County. But certain combinations permit Arlington to be given 2 Senators. The results of these various combinations for Arlington County are listed below:

<u>Southwest Area</u>	<u>Eastern Area</u>	<u>Number of Representatives for Arlington County</u>
Plan A	A	1
Plan B	B	1
Plan C	C	1
Plan A-1	A	2
Plan B	A	2
Plan C	A	2

The general areas delineated by the use of Southwest and Eastern areas cited above are indicated on the accompanying maps by the five crosslines.

[fol. 258]  
IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
PLAINTIFFS' EXHIBIT 7

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

July 17, 1961

SENATE

PLAN A

Total number of districts	= 31
Existing districts used	= 11
Existing districts used as nuclei for new districts	= 6
Completely new districts	= 14

Plan A-1 can be used in the southwestern part of the State with Plan A in the rest of the State so as to free 1 Senator from the southwest region that can be given to Arlington County, giving it a total of 2 Senators.

Plan A employs the least tolerance of deviations of district size from the State average and was unconcerned with preserving existing districts. It consciously sought to achieve as much population equality between districts as practicable.

The solid lines that separate certain district groupings indicate areas of flexibility in districting arrangements where portions of other plans can be utilized.

Extremes of over and underrepresentation in Plan A are 1.22 and .76.

## SENATE

## PLAN A

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
NORFOLK COUNTY SOUTH NORFOLK PRINCESS ANNE VIRGINIA BEACH NORTHAMPTON ACCOMACK	2	103,233	.96
Norfolk City	3	101,623	.98
Portsmouth	1	114,773	.86
Newport News Hampton or NEWPORT NEWS HAMPTON	2 1 1	101,460 113,662 89,258	.98 .87 1.11
SUSSEX Southampton Isle of Wight Nansemond Suffolk	1	100,745	.98
HALIFAX MECKLENBURG BRUNSWICK GREENSVILLE SOUTH BOSTON	1	104,973	.94
GOOCHLAND POWHATAN CUMBERLAND BUCKINGHAM PRINCE EDWARD AMELIA NOTTOWAY CHARLOTTE LUNENBURG	1	96,158	1.03
Lynchburg Campbell APPOMATTOX	1	96,896	1.02
DINWIDDIE PETERSBURG PRINCE GEORGE HOPEWELL SURRY	1	103,318	.96

[fol. 260]

PLAN A (continued)

2

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
CHARLES CITY JAMES CITY NEW KENT WILLIAMSBURG YORK KING WILLIAM KING & QUEEN MIDDLESEX MATHEWS GLOUCESTER	1	88,761	1.12
CHESTERFIELD COLONIAL HEIGHTS HENRICO	2	99,062	1.00
Richmond City	2	109,979	.90
HANOVER CAROLINE ESSEX KING GEORGE WESTMORELAND RICHMOND COUNTY NORTHUMBERLAND LANCASTER	1	90,984	1.09
ALBEMARLE CHARLOTTESVILLE NELSON AMHERST	1	96,101	1.03
STAFFORD SPOTSYLVANIA FREDERICKSBURG LOUISA ORANGE CULPEPER FLUVANNA	1	92,508	1.07
ROCKINGHAM HARRISONBURG PAGE GREENE MADISON RAPPAHANNOCK	1	86,243	1.15
Shenandoah Frederick Winchester Clarke WARREN	1	81,473	1.22

[fol. 261]

PLAN A (continued)

3

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
LOUDOUN PRINCE WILLIAM FAUQUIER	1	98,779	1.00
Fairfax Falls Church	3	95,065	1.04
Bath Highland Augusta Staunton Waynesboro	1	83,845	1.18
Craig Alleghany Clifton Forge Covington Botetourt Bedford Rockbridge Buena Vista	1	109,896	.90
LEE Wise Norton Dickenson	1	94,610	1.05
SCOTT Washington Bristol Smyth	1	112,099	.88
Roanoke City	1	97,110	1.02
MONTGOMERY RADFORD GILES PULASKI	1	86,771	1.14
BLAND WYTHE Grayson Galax Carroll Floyd	1	84,241	1.18
Buchanan Russell Tazewell	1	107,805	.92

[Vol. 262]

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PLAN A (continued)

4

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Patrick Henry Martinsville Pittsylvania Danville	2	89,644	1.11
ROANOKE FRANKLIN	1	87,618	1.13
ARLINGTON ALEXANDRIA	2	127,212	.78

PLAN A-1

GILES WYTHE PULASKI GRAYSON CARROLL GALAX	1	112,274	.88
Buchanan Russell Tazewell BLAND	1	113,787	.87
PITTSYLVANIA DANVILLE	1	104,873	.95
PATRICK HENRY MARTINSVILLE FRANKLIN FLOYD	1	110,802	.90
MONTGOMERY RADFORD ROANOKE COUNTY	1	103,987	.95
Arlington	2	81,701	1.21
Alexandria	1	91,023	1.09

[Vol. 263]



UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

July 17, 1961

SENATE

PLAN B

Total Number of Districts 1	= 31
Existing districts used	= 10
Existing districts used as nuclei for new districts	= 7
Completely new districts	= 14

Plan B offers alternatives in certain districts. The cities of Newport News and Hampton can be joined as a single district with 2 senators, or each city may constitute a separate district with one senator.

Similarly, Chesterfield County and Colonial Heights can be joined with Henrico County in a 2-senator single district; or Chesterfield County and Colonial Heights may be a separate district with one senator, while Henrico also is a separate district with one senator.

This plan is similar in the Southwestern part of the State to Senate Plan A. However, in this plan the additional senator is given to the Southeastern area generally. As a result there is one more district in the Southeastern area than Plan A offers.

Extremes of over and underrepresentation in Plan B are 1.22 and .78.

[fol. 265]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
PLAINTIFFS' EXHIBIT 8

## SENATE

## PLAN B

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
NORFOLK COUNTY	2	103,233	.96
SOUTH NORFOLK			
Princess Anne			
Virginia Beach			
Northampton			
Accomack			
Norfolk City	3	101,623	.98
Portsmouth	1	114,773	.86
Newport News	2	101,460	.98
Hampton			
or			
NEWPORT NEWS	1	113,662	.87
HAMPTON	1	89,258	1.11
Southampton	1	88,334	1.12
Isle of Wight			
Nansemond			
Suffolk			
BRUNSWICK	1	90,730	1.09
Greensville			
Sussex			
Surry			
Prince George			
Hopewell			
HALIFAX	1	84,407	1.17
SOUTH BOSTON			
CHARLOTTE			
MECKLENBURG			
APPOMATTOX	1	84,460	1.17
BUCKINGHAM			
PRINCE EDWARD			
CUMBERLAND			
AMELIA			
POWHATAN			
GOCHLAND			
PLUVANNA			
LOUISA			
Campbell	1	87,748	1.13
Lynchburg			

[fol. 266]

PLAN B (continued)

2

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
LUNENBURG Nottoway Dinwiddie Petersburg	1	86,597	1.15
CHARLES CITY JAMES CITY NEW KENT WILLIAMSBURG YORK KING WILLIAM KING & QUEEN MIDDLESEX MATHES GLOUCESTER	1	88,761	1.12
CHESTERFIELD COLONIAL HEIGHTS HENRICO	2	99,062	1.00
or			
CHESTERFIELD	1	80,784	1.23
COLONIAL HEIGHTS	1	117,339	.85
HENRICO	1	109,979	.90
Richmond City	2	83,741	1.18
CAROLINE ESSEX WESTMORELAND RICHMOND COUNTY NORTHUMBERLAND LANCASTER HANOVER	1	96,101	1.03
ALBEMARLE CHARLOTTESVILLE NELSON AMHERST	1	84,280	1.18
ORANGE CULPEPER SPOTSYLVANIA FREDERICKSBURG STAFFORD KING GEORGE GREENE	1		

[fol. 267]

PLAN B (continued)

3

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
ROCKINGHAM HARRISONBURG PAGE MADISON RAPPAHANNOCK	1	81,528	1.15
Shenandoah Frederick Winchester Clarke WARREN	1	81,473	1.22
LOUDOUN PRINCE WILLIAM FAUQUIER	1	98,779	1.00
Fairfax Falls Church	3	95,065	1.04
Bath Highland Augusta Staunton Waynesboro	1	83,845	1.18
Craig Alleghany Clifton Forge Covington Botetourt Bedford Rockbridge Buena Vista	1	109,896	.90
LEE Wise Dickenson Norton	1	94,610	1.05
SCOTT Washington Smyth Bristol	1	112,099	.88
Roanoke City	1	97,110	1.02
MONTGOMERY RADFORD ROANOKE COUNTY	1	103,987	.95

[fol. 268]

PLAN B (continued)



<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
GILES WYTHE PULASKI GRAYSON CARROLL GALAX	1	112,274	.88
Buchanan Russell Tazewell BLAND	1	113,787	.92
PATRICK HENRY MARTINSVILLE FRANKLIN FLOYD	1	110,802	.90
PITTSYLVANIA DANVILLE	1	104,873	.95
ARLINGTON ALEXANDRIA	2	127,212	.78

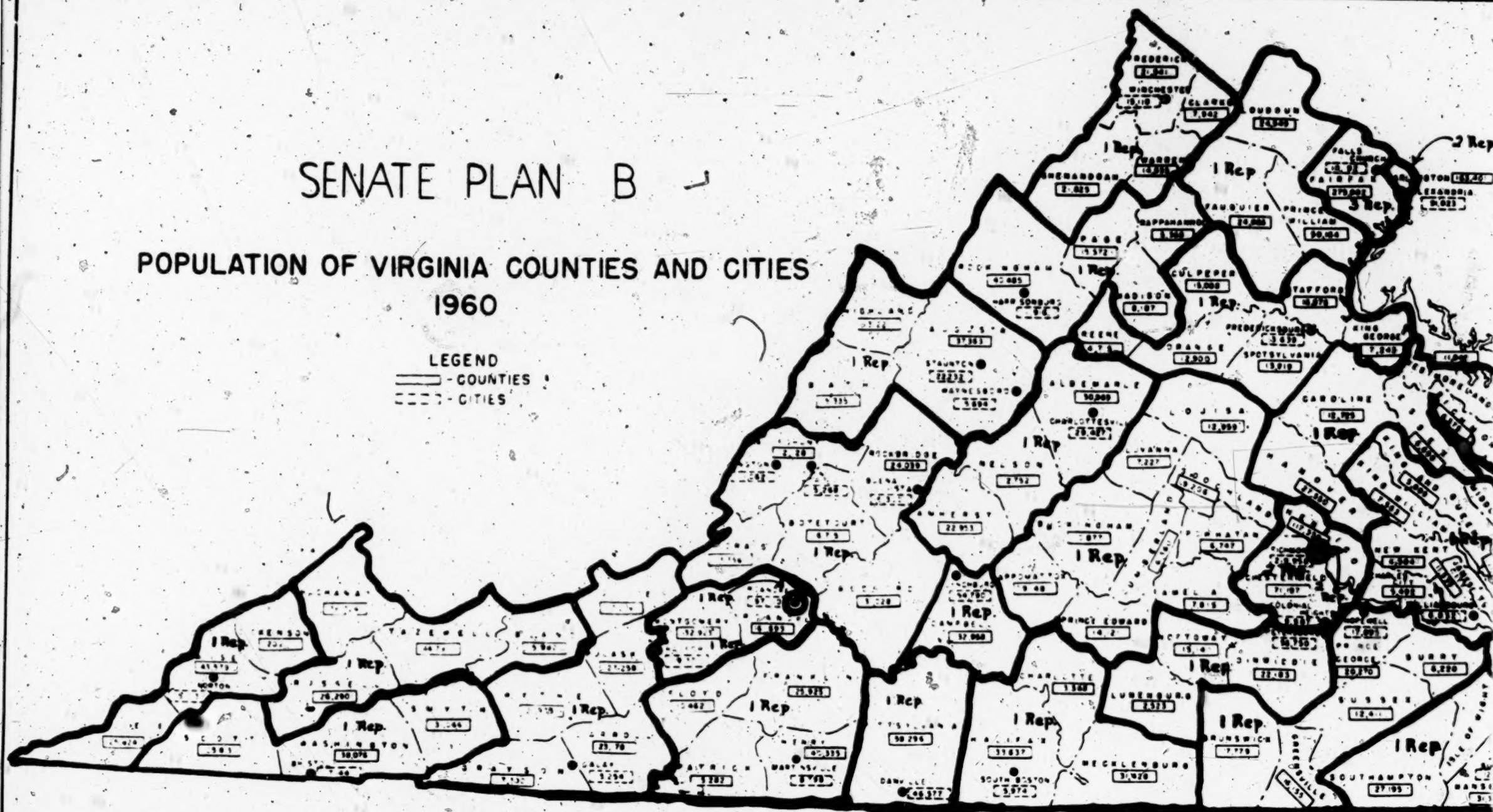
[fol. 269]

# SENATE PLAN B

# POPULATION OF VIRGINIA COUNTIES AND CITIES 1960

### LEGEND

 - COUNTIES  
 - CITIES



[fol. 271]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA \*

## PLAINTIFFS' EXHIBIT 9

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

August 7, 1961

## SENATE

## PLAN B

SUMMARY OF CHANGES TO  
EXISTING SENATE DISTRICTS

1. Existing districts retained by Senate Plan B with the same number of representatives are:

Districts 5, 10, 12, 20, 22, and 35.

2. Existing districts retained but with changes in the number of representatives are:

District 2, City of Norfolk 2 to 3

District 28, Fairfax County 1 to 3  
Falls Church  
Fairfax City

District 32, Hampton 1 to 2  
Newport News

District 34, City of Richmond 3 to 2

3. Existing districts used as nuclei of new districts:

District 1 Gains: Norfolk County (from District 3)  
206,000\*  
South Norfolk (from District 3)  
Gains 1 additional representative

\* Pencil notation.

Italicized numerals underscored in original copy.

District 6 Gains: Brunswick (from District 7)

District 8 Gains: Lunenburg (from District 7)

District 15 Gains: Scott (from District 16)

District 17 Gains: Lee (from District 16)

District 18 Gains: Bland (from District 19)

District 24 Gains: Warren (from District 23)

8/28/62 GH\*

[fol. 272]

4. Districts that have been altered by loss or gain of counties:

District 4 Loses: Prince Edward (to District 11)  
Gains: Mecklenburg (from District 7)

District 9 combined with District 36  
Gains one additional representative

District 11 Loses: Amherst (to District 25)  
Nelson (from District 25)  
Gains: Prince Edward (from District 4)  
Fluvanna (from District 25)  
Goochland (from District 26)  
Louisa (from District 26).

District 13 Loses: Pittsylvania and Danville which  
are combined to form a new single member district

Gains: Floyd (from District 14)  
Franklin (from District 21)

District 19 Loses: Bland (to District 18)

Gains: Carroll  
Grayson  
Galax (all from District 14)

District 21 Loses: Franklin (to District 13)

District 23 Loses: Warren (to District 24)

Gains: Madison (from District 25)

\* Pencil notation.

District 25 Loses: Fluvanna (to District 11)  
 Madison (to District 23)  
 Greene (to District 26)

Gains: Nelson (from District 11)  
 Amherst (from District 11)

District 26 Loses: Goochland (to District 11)  
 Louisa (to District 11)

Gains: Greene (from District 25)  
 Culpeper (from District 27)  
 King George (from District 29)  
 Stafford (from District 29)

[fol. 273]

District 27 Loses: Culpeper (to District 26)

Gains: Prince William (from District 29)

District 30 Loses: King William  
 King & Queen  
 Middlesex (all to District 31)

Gains: Lancaster  
 Northumberland  
 Richmond County  
 Westmoreland (all from District 29)

District 31 Loses: Warwick (to District 32)

Gains: King William (from District 30)  
 King & Queen (from District 30)  
 Middlesex (from District 30)  
 Charles City (from District 33)

District 33 Loses: Charles City (to District 31)

Gains one additional representative

5. Districts that do not appear in Senate Plan B are:

District 3 Norfolk County)  
 South Norfolk )—combined with District 1

District 7 Brunswick (to District 6)  
 Lunenburg (to District 8)  
 Mecklenburg (to District 4)

District 14 Carroll (to District 19)  
 Floyd (to District 13)  
 Grayson (to District 19)  
 Galax (to District 19)

District 16 Lee (to District 17)  
 Scott (to District 15)

District 29 King George (to District 26)  
 Lancaster (to District 30)  
 Northumberland (to District 30)  
 Prince William (to District 27)  
 Richmond County (to District 30)  
 Stafford (to District 26)  
 Westmoreland (to District 30)

District 36 Alexandria (combined with District 9—  
 Arlington)

[fol. 274]

6. Areas that gain representation in Senate Plan B:

Fairfax County	
Falls Church	given 5 senators (now has 3)
Arlington	
Alexandria	

Henrico	given 2 senators (now has 1)
Chesterfield	
Colonial Heights	

Norfolk City	given 3 senators (now has 2)
--------------	------------------------------

Hampton	given 2 senators (now has 1)
Newport News	

22

150.

PLAINTIFFS' EXHIBIT 10

See Opposite 15

2

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

July 17, 1961

SENATE

PLAN C

Total Number of Districts	= 33
Existing districts used	= 18
Existing districts used as nuclei of new districts	= 10
Completely new districts	= 5

Plan C permits the greatest tolerance in deviations of districts from the average district size. Generally, existing districts with an index ranging as far from 1.00 as 1.25 and .75 have been left alone, except when it was necessary to adjust a neighboring district so that it might fall within that range. New districts too were created just to fall within the same range, rather than to have them closely approximate 1.00.

Plan C also is guided by the principle of least disturbance to existing districts. Therefore, districts deviating too far from the accepted range have generally been split and their component counties and cities made part of neighboring existing districts. This has resulted in fewer completely new districts, and great use of existing districts with the least amount of new counties and cities added to them.

Extremes of over or underrepresentation in Plan C are 1.35 and .61.

[Fol. 275]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

8/28/62 *HA*

## SENATE

## PLAN C

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Norfolk County South Norfolk	1	73,647	1.35
Accomack Northampton Princess Anne Virginia Beach	1	132,819	.75
Norfolk City	3	101,623	.86
Portsmouth	1	114,773	.86
Newport News	1	113,662	.87
Hampton	1	89,258	1.11
Isle of Wight Southampton Nansemond Suffolk	1	88,334	1.12
Halifax South Boston Charlotte Prince Edward MECKLENBURG	1	99,528	1.00
Greensville Hopewell Prince George Surry Sessex BRUNSWICK	1	90,730	1.09
Appomattox Buckingham Cumberland Powhatan Amherst Nelson Amelia GOOCHLAND	1	85,858	1.16
Campbell Lynchburg	1	87,748	1.13

[fol. 276]

## PLAN C (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Dinwiddie Petersburg Nottoway LUNEBURG	1	86,597	1.15
NEW KENT JAMES CITY WILLIAMSBURG YORK GLOUCESTER MATHIAS CHARLES CITY KING WILLIAM	1	76,553	1.30
CHESTERFIELD HENRICO COLONIAL HEIGHTS	2	99,062	1.00
Richmond	2	109,979	.90
NORTHUMBERLAND LANCASTER MIDDLESEX KING & QUEEN ESSEX CAROLINE HANOVER	1	78,532	1.26
PRINCE WILLIAM STAFFORD KING GEORGE WESTMORELAND RICHMOND	1	91,700	1.08
Albemarle Charlottesville Fluvanna Greene Madison	1	80,525	1.23
FAUQUIER CULPEPER SPOTSYLVANIA FREDERICKSBURG ORANGE LOUISA	1	92,471	1.07

[fol. 277]

PLAN C (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Harrisonburg Page Rappahannock Rockingham Warren	1	87,996	1.13
Clarke Frederick Shenandoah Winchester LOUDOUN	1	91,367	1.09
Fairfax Falls Church	3	95,064	1.04
Augusta Bath Highland Staunton Waynesboro	1	83,845	1.18
GILES Alleghany Bedford Botetourt Buena Vista Clifton Forge Covington Craig Rockbridge	1	127,115	.78
Dickenson Wise Norton LEE	1	94,610	1.05
Bristol Smyth Washington SCOTT	1	112,099	.88
Roanoke City	1	97,110	1.02
Franklin Montgomery Radford Roanoke County	1	129,912	.76

[fol. 278]

PLAN C (continued)

<u>District</u>	<u>Number of Representatives</u>	<u>Population per Representative</u>	<u>Index</u>
Grayson Galax Carroll Floyd WYTHE PULASKI	1	105,517	.94
Buchanan Russell Tazewell BLAND	1	113,787	.87
Danville Henry Martinsville Patrick Pittsylvania	2	89,644	1.11
Arlington	1	163,401	.61
Alexandria	1	91,023	1.09

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 11

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

August 7, 1961

SENATE  
PLAN C

SUMMARY OF CHANGES TO  
EXISTING SENATE DISTRICTS

1. Existing districts retained by Senate Plan C with the same number of representatives are:

Districts 1, 3, 5, 9, 10, 12, 13, 21, 22, 23, 25, 35, and 36.

2. Existing districts retained but with changes in the number of representatives are:

District 2, City of Norfolk 2 to 3

District 28, Fairfax County 1 to 3  
Falls Church  
Fairfax City

District 34, City of Richmond 3 to 2

District 32, Hampton

Newport News (is divided into two districts with one senator for each of the cities, instead of 1 for both as now)

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*Italicized numerals underscored in original copy.*

3. Existing districts used as nuclei of new districts:

District 4 Gains: Mecklenburg (from District 7)

District 6 Gains: Brunswick (from District 7)

District 8 Gains: Lunenburg (from District 7)

District 11 Gains: Goochland (from District 26)

District 14 Gains: Wytthe (from District 19)  
Pulaski (from District 19)

District 15 Gains: Scott (from District 16)

8/28/62 GH\*

[fol. 281]

District 17 Gains: Lee (from District 16)

District 18 Gains: Bland (from District 19)

District 20 Gains: Giles (from District 19)

District 24 Gains: Loudoun (from District 27)

4. Districts that have been altered by loss or gain of counties:

District 26 Loses: Goochland (to District 11)

Gains: Fauquier (from District 27)  
Culpeper (from District 27)

District 29 Loses: Lancaster (to District 30)  
Northumberland (to District 30)

District 30 Loses: King William (to District 31)

Gains: Lancaster (from District 29)  
Northumberland (from District 29)

District 31 Loses: Warwick portion of Newport News to the Newport News district

Gains: Charles City (from District 33)  
King William (from District 30)

District 33 Loses: Charles City (to District 31)

Gains one additional senator

## 5. Districts that do not appear in Senate Plan C are:

District 7 Mecklenburg (to District 4)  
 Lunenburg (to District 8)  
 Brunswick (to District 6)

District 16 Lee (to District 17)  
 Scott (to District 15)

District 19 Wythe (to District 14)  
 Pulaski (to District 14)  
 Bland (to District 18)  
 Giles (to District 20)

District 27 Loudoun (to District 24)  
 Fauquier (to District 26)  
 Culpeper (to District 26)

[fol. 282]

## 6. Areas that gain representation in Senate Plan C:

Fairfax County  
 Falls Church  
 Arlington  
 Alexandria

given 5 senators (now has 3)

Henrico  
 Chesterfield  
 Colonial Heights

given 2 senators (now has 1)

Norfolk City

given 3 senators (now has 2)

Hampton  
 Newport News

given 2 senators (now has 1)

[fol. 283]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 12

REAPPORTIONMENT OF  
THE STATE FOR REPRESENTATION

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REPORT OF THE  
COMMISSION ON REDISTRICTING

to

THE GOVERNOR

and

THE GENERAL ASSEMBLY OF VIRGINIA

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[EMBLEM]

8/28/62 GH\*

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COMMONWEALTH OF VIRGINIA  
*Department of Purchases and Supply*  
Richmond  
1961

\* Pencil notation.

[fol. 284]

**MEMBERS OF COMMISSION**

---

LAWRENCE H. HOOVER, Chairman  
CHARLES R. FENWICK, Vice-Chairman  
THOS. H. BLANTON  
J. L. CAMBLOS  
ROBERT L. CLARK  
JOHN WARREN COOKE  
WELDON COOPER  
ALBERT EDWARD COX  
W. E. CUNDIFF  
GARLAND GRAY  
OMER L. HIRST  
EDWARD M. HUDGINS  
HERBERT V. KELLY  
GARLAND E. MOSS  
WILLIAM T. MUSE  
H. L. OPIE, JR.  
MOSBY G. PERROW, JR.  
JAMES W. ROBERTS  
WILLIAM A. STUART  
G. A. TREAKLE

---

**STAFF**

JOHN B. BOATWRIGHT, JR.  
WILDMAN S. KINCHELOE, JR.  
FLETCHER W. HARKRADER, JR.  
G. M. LAPSLEY

[fol. 285]

**REAPPORTIONMENT OF THE STATE  
FOR REPRESENTATION**

Richmond, Virginia, November 15, 1961

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*  
and  
THE GENERAL ASSEMBLY OF VIRGINIA

The results of the census of 1960 became available in late 1960. Your Excellency in January, 1961, created a commission to report with recommendations concerning the apportionment of representation in the General Assembly and in the House of Representatives of the Congress. The letter of appointment of The Commission designated Lawrence H. Hoover as Chairman and Charles R. Fenwick as Vice-Chairman.

The other members of the Commission were: Thos. H. Blanton, member of the Senate of Virginia, Bowling Green; J. L. Camblos, member of the House of Delegates, Big Stone Gap; Robert L. Clark, member of the House of Delegates, Stuart; John Warren Cooke, member of the House of Delegates, Mathews; Weldon Cooper, Charlottesville; Albert Edward Cox, Danville; W. E. Cundiff, Vinton; Garland Gray, member of the Senate of Virginia, Waverly; Omer L. Hirst, Annandale; Edward M. Hudgins, member of the House of Delegates, Richmond; Herbert V. Kelly, Newport News; Garland E. Moss, Chase City; William T. Muse, University of Richmond, Virginia; H. L. Opie, Jr., Staunton; Mosby G. Perrow, Jr., member of the Senate of Virginia, Lynchburg; James W. Roberts, member of the House of Delegates, Norfolk; William A. Stuart, Abingdon; G. A. Treake, Portsmouth. The Commission appointed John B. Boatwright, Jr., and W. S. Kincheloe, Jr., as Secretary and Recording Secretary, respectively.

At the first meeting of the Commission on April 24, 1961, it was decided to request the Bureau of Public Administration of the University of Virginia to prepare data showing the populations represented in the several legislative and Congressional districts. The Bureau supplied this information as well as a great deal of other material, all of which has been most helpful to the Commission.

The Commission sought the views of all persons who had proposals to make concerning the reapportionment of the State. It held two public hearings, one in Roanoke and the other in Richmond, after due publicity, both of which were well attended and at which a number of suggestions were received. In addition, a number of plans were sent the Commission for its consideration. All these plans and suggestions were carefully studied.

The controlling case in Virginia on reapportionment of the House of Representatives of the Congress is the case of *Brown v. Saunders*—159 Va. 28, 166 S.E. 105. Information was obtained concerning cases pending in the Supreme Court of the United States involving the question of reapportionment, cases decided in certain of the federal courts in which the same question was passed upon, and other material of like nature. Consultations were held with the Attorney General and his staff and these have been of great value to the Commission.

In view of the considerable volume of information before the Commission, it was agreed to appoint a Steering Committee, composed of representatives from each of the Congressional Districts to study the material before the Commission and to prepare a plan or plans involving reapportionment of the General Assembly and of the House of Representatives of the Congress. The Steering Committee met on numerous occasions and made its report to the full Commission, complete with suggested plans and maps outlining the proposed districts.

The Commission has carefully considered all of the material available to it, the views expressed at the public hearings, the information received by mail and otherwise, the judicial decisions in point, the report of the Steering Committee, and now submits its recommendations:

1. The present apportionment of the House of Representatives of the Congress should remain as it is.
2. The proposed plan for the apportionment of the State Senate should be adopted.
3. The proposed plan for the apportionment of the House of Delegates should be adopted.

## REASONS FOR RECOMMENDATIONS

[fol. 287]

### THE GENERAL ASSEMBLY

Section 43, the controlling section for redistricting the General Assembly is as follows:

"Section 43. The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

The Constitution does not lay down specific requirements as to factors to be observed in redistricting the General Assembly. We have attempted to keep in mind in our [col. 288] plan the factors of compactness, contiguity, ease of access and communication, community of interest, and a reasonable degree of equality of representation. The map of Virginia and the bare population data for the counties and cities, important as they are, do not indicate the other features which must be considered. We have endeavored to give due consideration to all factors in presenting the plans set out below.

It must be remembered that occasionally a district which may be under-represented in the House of Delegates may be over-represented in the Senate. Hence, the combined representation of the House and Senate should be considered in determining the extent of over or under-representation in the area.

## 2. THE SENATE OF VIRGINIA

In the reapportionment of the Senate, we have attempted to take into consideration the representation afforded under the reapportionment of the House of Delegates since, as noted, one may be used to offset the other in certain cases. As is the case in the House plan, we sought to preserve existing districts and create new districts on the basis of community of interest, a reasonable degree of equality in population, and compactness and contiguity. Areas which have grown have been given additional representation and areas which have lost population to a marked degree have lost representation. The adjustments and changes which are possible are numerous, but those which we have made appear, in our opinion, reasonable and fair. The districts range in representation per senator from a low of 67,000 to a high of 163,401. (This latter case is Arlington, which, however, is also assigned a floater senator, not reflected in this figure.) The proposed redistricting of the Senate is as follows:

Proposed Districts	Population	No. of Senators	Population per Senator
Accomack	30,635	1	132,819
Northampton	16,966		
Princess Anne	77,127		
Virginia Beach	8,091		
	132,819		
Norfolk County	51,612	1	117,622
South Norfolk	22,035		
Nansemond	31,366		
Suffolk	12,609		
	117,622		
Norfolk City	304,869	3	101,623
Prince George	20,270	1	101,155
Hopewell	17,895		
Surry	6,220		
Sussex	12,411		
Southampton	27,195		
Isle of Wight	17,164		
	101,155		
[fol. 289]			
Lunenburg	12,523	1	77,885
Mecklenburg	31,428		
Brunswick	17,779		
Greenville	16,155		
	77,885		
Dinwiddie	22,183	1	74,074
Petersburg	36,750		
Nottoway	15,141		
	74,074		
Halifax	33,637	1	67,100
South Boston	5,974		
Charlotte	13,368		
Prince Edward	14,121		
	67,100		

Proposed Districts	Population	No. of Senators	Population per Senator
Amherst	22,953	1	76,652
Nelson	12,752		
Appomattox	9,148		
Buckingham	10,877		
Cumberland	6,360		
Powhatan	6,747		
Amelia	7,815		
	<hr/> 76,652		
Lynchburg	54,790	1	87,748
Campbell	32,958		
	<hr/> 87,748		
Pittsylvania	58,296	2	89,644
Danville	46,577		
Henry	40,335		
Martinsville	18,798		
Patrick	15,282		
	<hr/> 179,288		
Portsmouth	114,773	1	114,773
Grayson	17,390	1	98,578
Galax	5,254		
Carroll	23,178		
Floyd	10,462		
Montgomery	32,923		
Radford	9,371		
	<hr/> 98,578		
Roanoke County	61,693	1	87,618
Franklin	25,925		
	<hr/> 87,618		
[fol. 290]			
Scott	25,813	1	81,033
Washington	38,076		
Bristol	17,144		
	<hr/> 81,033		

Proposed Districts	Population	No. of Senators	Population per Senator
Roanoke City	97,110	1	97,110
Lee	25,824	1	94,627
Wise	43,579		
Norton	5,013		
Dickenson	20,211		
	<hr/> 94,627		
Buchanan	36,724	1	107,805
Russell	26,290		
Tazewell	44,791		
	<hr/> 107,805		
Bland	5,982	1	103,500
Giles	17,219		
Smyth	31,066		
Wythe	21,975		
Pulaski	27,258		
	<hr/> 103,500		
Craig	3,356	1	109,896
Alleghany	12,128		
Covington	11,062		
Clifton Forge	5,268		
Botetourt	16,715		
Rockbridge	24,039		
Buena Vista	6,300		
Bedford	31,028		
	<hr/> 109,896		
Highland	3,221	1	83,845
Bath	5,335		
Augusta	37,363		
Staunton	22,232		
Waynesboro	15,694		
	<hr/> 83,845		

Proposed Districts	Population	No. of Senators	Population per Senator
Rockingham	40,485	1	87,996
Harrisonburg	11,916		
Page	15,572		
Rappahannock	5,368		
Warren	14,655		
	<hr/> 87,996		
[fol. 291]			
Shenandoah	21,825	1	91,367
Frederick	21,941		
Winchester	15,110		
Clarke	7,942		
Loudoun	24,549		
	<hr/> 91,367		
Richmond City	219,958	2	109,979
Henrico	117,339	1	117,339
Newport News	113,662	1	113,662
Chesterfield	71,197	1	104,647
Colonial Heights	9,587		
Charles City	5,492		
James City	11,539		
Williamsburg	6,832		
	<hr/> 104,647		
Hampton	89,258	1	110,841
York	21,583		
	<hr/> 110,841		
Caroline	12,725	1	90,280
Hanover	27,550		
Essex	6,690		
King and Queen	5,889		
King William	7,563		
New Kent	4,504		
Gloucester	11,919		
Mathews	7,121		
Middlesex	6,319		
	<hr/> 90,280		

Proposed Districts	Population	No. of Senators	Population per Senator
Fauquier	24,066	1	101,677
Culpeper	15,088		
Orange	12,900		
Spotsylvania	13,819		
Fredericksburg	13,639		
Louisa	12,959		
Goochland	9,206		
	101,677		
Prince William	50,164	1	111,059
Stafford	16,876		
King George	7,243		
Westmoreland	11,042		
Northumberland	10,185		
Richmond County	6,375		
Lancaster	9,174		
	111,059		
[fol. 292]			
Madison	8,187	1	80,525
Greene	4,715		
Albemarle	30,969		
Charlottesville	29,427		
Fluvanna	7,227		
	80,525		
Alexandria	91,023	1	91,023
Arlington	163,401	1	163,401
Fairfax County	261,417	2	142,597
Fairfax City	13,585		
Falls Church	10,192		
	285,194		
Arlington	163,401	1	448,595
		(floater seat)	
Fairfax County	261,417		
Fairfax City	13,585		
Falls Church	10,192		
	448,595		
Total		40	

One feature that is striking in the proposal we are submitting is the addition of a floater senator for the district composed of Arlington, Fairfax County and City, and the city of Falls Church. Up to this time there has been only one instance of a floater senator in Virginia.

It is fortunate that the reapportionment of the Senate can become effective shortly after the 1962 Session of the General Assembly because the entire Senate must be re-elected in 1963, as well as the House of Delegates. Hence, a better and more effective representation can go into play more quickly than was the case ten years ago.

### 3. THE HOUSE OF DELEGATES OF VIRGINIA

The plan which we propose for reapportionment of the House is as follows:

Proposed Districts	Population	No. of Delegates	Population per Delegate
Accomack	30,635	1	30,635
Accomack (floater)	30,635	1	47,601
Northampton	16,966		
	<hr/> 47,601		
[fol. 293]			
Virginia Beach	8,091	2	42,609
Princess Anne	77,127		
	<hr/> 85,218		
Norfolk City	304,869	7	43,553
Portsmouth	114,773	2	57,387
Norfolk County	51,612	2	36,823
South Norfolk	22,035		
	<hr/> 73,647		
Nansemond	31,366	2	44,167
Suffolk	12,609		
Isle of Wight	17,164		
Southampton	27,195		
	<hr/> 88,334		

Proposed Districts	Population	No. of Delegates	Population per Delegate
Surry	6,220	1	34,786
Sussex	12,411		
Greensville	16,155		
	34,786		
Lunenburg	12,523	1	30,302
Brunswick	17,779		
	30,302		
Mecklenburg	31,428	1	31,428
Prince George	20,270	1	38,165
Hopewell	17,895		
	38,165		
Petersburg	36,750	1	36,750
Dinwiddie	22,183	1	45,139
Nottoway	15,141		
Amelia	7,815		
	45,139		
Powhatan	6,747	1	36,736
Cumberland	6,360		
Buckingham	10,877		
Nelson	12,752		
	36,736		
[fol. 294]			
Charlotte	13,368	1	36,637
Prince Edward	14,121		
Appomattox	9,148		
	36,637		
Hampton	89,258	2	44,629
Newport News	113,662	3	37,887
James City	11,539	1	45,446
York	21,583		
Williamsburg	6,832		
Charles City	5,492		
	45,446		

Proposed Districts	Population	No. of Delegates	Population per Delegate
Hanover	27,550	1	39,617
King William	7,563		
New Kent	4,504		
	39,617		
Gloucester	11,919	1	25,359
Mathews	7,121		
Middlesex	6,319		
	25,359		
Northumberland	10,185	1	36,776
Westmoreland	11,042		
Lancaster	9,174		
Richmond County	6,375		
	36,776		
King George	7,243	1	32,547
Caroline	12,725		
Essex	6,690		
King and Queen	5,889		
	32,547		
Spotsylvania	13,819	1	44,334
Fredericksburg	13,639		
Stafford	16,876		
	44,334		
Prince William	50,164	1	50,164
Fluvanna	7,227	1	29,392
Goochland	9,206		
Louisa	12,959		
	29,392		
[fol. 295]			
Albemarle	30,969	1	35,684
Greene	4,715		
	35,684		

Proposed Districts	Population	No. of Delegates	Population per Delegate
Charlottesville	29,427	1	29,427
Richmond City	219,958	6	36,660
Henrico	117,339	3	39,113
Chesterfield	71,197	2	40,392
Colonial Heights	9,587		
	<hr/> 80,784		
Halifax	33,637	1	39,611
South Boston	5,974		
	<hr/> 39,611		
Lynchburg	54,790	1	54,790
Lynchburg (floater)	54,790	1	77,743
Amherst	22,953		
	<hr/> 77,743		
Campbell	32,958	1	32,958
Bedford	31,028	1	31,028
Pittsylvania	58,296	2	29,148
Danville	46,577	1	46,577
Rockbridge	24,039	1	35,674
Buena Vista	6,300		
Bath	5,335		
	<hr/> 35,674		
Augusta	37,363	2	39,255
Staunton	22,232		
Waynesboro	15,694		
Highland	3,221		
	<hr/> 78,510		
Culpeper	15,088	1	36,175
Madison	8,187		
Orange	12,900		
	<hr/> 36,175		

[fol. 296]

Proposed Districts	Population	No. of Delegates	Population per Delegate
Page	15,572	1	30,227
Warren	14,655		
	30,227		
Rockingham	40,485	1	52,401
Harrisonburg	11,916		
	52,401		
Rockingham (floater)	40,485	1	74,226
Harrisonburg (floater)	11,916		
Shenandoah	21,825		
	74,226		
Fauquier	24,066	1	29,434
Rappahannock	5,368		
	29,434		
Loudoun	24,549	1	24,549
Frederick	21,941	1	44,993
Winchester	15,110		
Clarke	7,942		
	44,993		
Alleghany	12,128	1	31,814
Covington	11,062		
Clifton Forge	5,268		
Craig	3,356		
	31,814		
Roanoke County	61,693	1	61,693
Roanoke County (floater)	61,693	1	78,408
Botetourt	16,715		
	78,408		

Proposed Districts	Population	No. of Delegates	Population per Delegate
Roanoke City	97,110	2	48,555
Montgomery	32,923	1	42,294
Radford	9,371		
	<hr/> 42,294		
Franklin	25,925	1	36,387
Floyd	10,462		
	<hr/> 36,387		
[fol. 297]			
Grayson	17,390	1	45,822
Galax	5,254		
Carroll	23,178		
	<hr/> 45,822		
Wythe	21,975	1	27,957
Bland	5,982		
	<hr/> 27,957		
Pulaski	27,258	1	44,477
Giles	17,219		
	<hr/> 44,477		
Smyth	31,066	1	31,066
Tazewell	44,791	1	44,791
Patrick	15,282	2	37,208
Henry	40,335		
Martinsville	18,798		
	<hr/> 74,415		
Buchanan	36,724	1	36,724
Wise	43,579	2	34,402
Norton	5,013		
Dickenson	20,211		
	<hr/> 68,803		

Proposed Districts	Population	No. of Delegates	per Delegate Population
Lee	25,824	1	25,824
Scott	25,813	1	25,813
Russell	26,290	1	26,290
Washington	38,076	2	27,610
Bristol	17,144		
	<hr/> 55,220		
Fairfax County	261,417	4	71,299
Fairfax City	13,585		
Falls Church	10,192		
	<hr/> 285,194		
Alexandria	91,023	2	45,512
Arlington	163,401	3	54,467
Total		100	

[fol. 298] In reviewing the foregoing, it is obvious that there are discrepancies in population; the lowest population per delegate appears to be 24,549 and the highest 71,299. (This does not include the floater districts because there is no effective way to indicate the population per delegate in such cases.)

In line with the shifts in population in the State, the representation of a number of districts has been decreased and that of other districts has been increased. We are aware that the increases where given may not be sufficient on an arithmetic basis to satisfy the people in the areas concerned. However, additional representation must come from other areas and there are limits to how far this process can go. Further, congested areas make it easier for a member of the General Assembly to represent many more people effectively than is the case in those areas which are widely scattered, or split by natural barriers, or have other factors which restrict communication between the legislator and his constituents. In summary, we have attempted to allocate to the growing areas as much as we could, realizing that the areas which must give up representation will do so with the greatest reluctance.

## WORK OF STAFF

The Bureau of Public Administration of the University of Virginia, and especially Dr. Ralph Eisenberg of the Bureau, were of material assistance to the Commission. They furnished us a number of studies of the apportionments which have been made in this State, and upon our request made comments upon the plans submitted to us which were of great value in making an evaluation of the proposals received. Our task has been made much easier by the work of Dr. Eisenberg and the Bureau and we wish to acknowledge our indebtedness.

The services of Mr. John B. Boatwright, Jr., Director of the Division of Statutory Research and Drafting, who served as Secretary to the Commission, and of the entire staff of his excellent office were invaluable throughout our deliberations, and in the formulation of this report.

Our research at the outset disclosed that throughout the nation numerous standards are employed in measuring the comparative representativeness of state legislatures. We were immediately impressed by the fact that Virginia, irrespective of the standard of measurement applied, has consistently ranked high in this regard, easily within the top one-fifth ( $1/5$ ) of all the states. This record, we believe, is the result of a long standing tradition of the General Assembly in using population as the *primary* criterion for reapportionment, but, at the same time, weaving into the pattern of representation a wise understanding and recognition of other realistic factors and unique problems presented by the diverse areas and interests of the Commonwealth.

This Commission has endeavored to develop a redistricting plan which will, if adopted, perpetuate this tradition. We feel we have accomplished that purpose despite the sharp increase in the population of the State during the past decade, and notwithstanding the marked shifts in the pattern of population.

We commend the plan herein set forth to the General Assembly. Its adoption, in our opinion, will keep Virginia high in rank among the 50 states in the representative character of its law-making bodies, if not actually advance

it still higher as one of the most representative state legislatures in the United States.

[fol. 299] Until such time as better proposals are offered, we expect to support the plans as the constitutional discharge of the mandate of Sections 43 and 55 of the Constitution of Virginia.

Respectfully submitted,

LAWRENCE H. HOOVER, Chairman  
 CHARLES R. FENWICK, Vice-Chairman  
 THOS. H. BLANTON  
 J. L. CAMBLOS  
 ROBERT L. CLARK  
 JOHN WARREN COOKE  
 WELDON COOPER  
 ALBERT EDWARD COX  
 W. E. CUNDIFF  
 OMER L. HIRST  
 EDWARD M. HUDGINS  
 HERBERT V. KELLY  
 GARLAND E. MOSS  
 WILLIAM T. MUSE  
 H. L. OPIE, JR.  
 MOSBY G. PERROW, JR.  
 JAMES W. ROBERTS  
 WILLIAM A. STUART  
 G. A. TREAKLE

\* See attached statement

STATEMENT OF CHARLES R. FENWICK,  
 STATE SENATOR ARLINGTON

I believe the Commission on Redistricting appointed by His Excellency, the Governor, has performed an outstanding service to the Commonwealth, and in the main I concur in its conclusions. I cannot, however, out of fairness to the Counties of Fairfax and Arlington, concur in the conclusions of the Commission regarding them. Fairfax County, the cities of Falls Church and Fairfax, with a population of

285,194 and 400 square miles, has been allocated one additional senator, a floater senator with Arlington, and two additional delegates. I feel that this area should receive at least one additional delegate to those recommended by the Commission.

Arlington with a population of 163,401 has at present one senator and three delegates, making Arlington 63,000 over populated for one Senator and 43,000 over populated for three delegates.

[fol. 300] Arlington has been recommended for a floater senator. I feel that out of fairness to Arlington it should have an additional delegate. Subject to the recommendations I have suggested, I concur in the report.

### STATEMENT OF OMER L. HIRST

This nation and this Commonwealth have made no greater contributions to the progress of mankind than the notion that the people are both entitled to and qualified to govern themselves. The implementation of this notion is the institution of self-government in which the people are governed by their chosen representatives through a body of law that applies equally to all. Equal justice under law is the distinguishing feature of our system, and the equal protection of the law the right of every citizen. Under this system, this nation has grown great, and this Commonwealth has shared and contributed to that greatness.

The noble concept of the equal protection of the law, whose value is undeniable, is valid only to the extent that there is equal representative participation in the making of the law. Unless there is equal representation in the making of the law, there cannot for long be equal protection under the law, for then the laws are made in effect by *some* of the people for application to *all* of the people. It is then inevitable that such laws presently will come to reflect the point of view of the people represented untempered by the points of view of the total citizenry. The institution or representative government is devitalized and citizens denied their rights to the extent that there is departure from equal representation in the lawmaking body.

In the practical aspects of the matter it must be recognized that mathematically equal representation is very difficult, if not impossible to attain, but that any substantial departure from the goal of equal representation must be justified clearly by the mitigating circumstances of the particular case. For example, area, extent of and impediment to local communications, community of interest, population trends, whether increasing or decreasing, number of jurisdictions in the particular district, and contribution to the economic well-being of the whole Commonwealth should be considered, not as a substitute for the basic principle of equal representation, but rather as mitigating circumstances justifying some departure from it. The Commission's recommendations must be weighed accordingly.

In the case of the Commission's recommendation that the 10 Congressional Districts be left as they are, the disparities of population are so great in fact as to cause serious doubt as to the wisdom of taking no action, though the Commission was reassured by the advice of the Attorney General.

The Commission's recommendations as to the redistricting of the State Senate achieve a commendable degree of balance in maintaining the principle of equal representation on the one hand and in adjusting to practical circumstances on the other.

The Commission's recommendations for the redistricting of the House of Delegates contain inequalities of representation of such proportion as to exceed reasonable tolerances and to justify correction by the General Assembly. Ideally, each of the 100 Delegates should represent 39,669 persons. Against this ideal, it is recommended that one Delegate represent 24,549 persons and another 71,299 persons. Actually the extremes are slightly greater, for the 47,601 inhabitants of the two Eastern Shore Counties have 2 Delegates, or in effect, one Delegate per 23,800 persons. Nor are the inequalities entirely explainable in terms of area. For example, the City of Richmond with only 37 square miles has a Delegate for each 36,660 population, while in the District composed of the Cities of Fairfax and Falls Church, and the County of Fairfax, which in turn contains two incorporated towns and with a total area of

over 400 square miles, there is only one Delegate for each 71,299 persons. In another region of the Commonwealth, Washington County and the City of Bristol, with a total population of 55,220, are allocated two Delegates, and Scott County, which adjoins Washington County, is allocated a Delegate for its 25,813 population. It must be emphasized that the instances cited are the extremes, and the citation is not intended to reflect adversely on the body of the recommendation.

The studies prepared by the Bureau of Public Administration and the suggestions of certain Commission members showed various ways in which these inequalities and inconsistencies might be removed. The Commission's recommendations are on the whole commendable and reflect the amount of time and dedicated effort that preceded them. Nonetheless, both principle and prevailing circumstance justify the slight additional effort that will attain as nearly equal representation as is practicable. By reducing the extremes in both directions, which would involve only minor changes in the Commission's recommendations, the rights of our citizens will be maintained, the institution of self-government fully preserved, and the honor of Virginia, the greatest treasure of her people, raised to a new high.

I therefore concur in the recommendations as to the State Senate, and I dissent from the recommendations as to the House of Delegates. Judgment is reserved as to the redistricting of the Congressional Districts.

#### STATEMENT OF G. A. TREAKLE

I concur in the report but must object to the addition of the city of Suffolk and the county of Nansemond to the third Senatorial district.

[fol. 302]

*A BILL to amend and reenact § 24-12, as amended, of the Code of Virginia, relating to apportionment of members of House of Delegates.*

Be it enacted by the General Assembly of Virginia:

1. That § 24-12, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 24-12. Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

- First.—Accomack, one.
- Second.—Accomack and Northampton, one.
- Third.—Albemarle and Greene, one.
- Fourth.—Charlottesville, one.
- Fifth.—Alexandria, \* *two*.
- Sixth.—Alleghany, Covington, *Craig* and Clifton Forge, one.
- Seventh.—Amelia, \* *Dinwiddie* and Nottoway, one.
- Eighth.—Amherst and Lynchburg, one.
- Ninth.—Arlington, three.
- Tenth.—Augusta, Highland, Staunton and Waynesboro, two.
- Eleventh.—Bedford, one.
- Twelfth.—Bland and \* *Wythe*, one.
- Thirteenth.—Botetourt and \* *Roanoke County*, one.
- Fourteenth.—Brunswick and Lunenburg, one.
- Fifteenth.—Buchanan, one.
- \* *Sixteenth*.—Buckingham, \* *Nelson*, *Powhatan* and Cumberland, one.
- \* *Seventeenth*.—Campbell, one.
- \* *Eighteenth*.—Caroline, King George, Essex and King and Queen, one.
- \* *Nineteenth*.—Carroll, \* *Grayson* and *Galax*, one.
- \* *Twentieth*.—Charles City, James City, \* York and Williamsburg, one.
- \* *Twenty-first*.—Charlotte, *Appomattox* and Prince Edward, one.

• *Twenty-second*.—Chesterfield and Colonial Heights, • two.

• *Twenty-third*.—Clarke, Frederick and Winchester, one.

• *Twenty-fourth*.—Danville, one.

• *Twenty-fifth*.—Hampton, • two.

• *Twenty-sixth*.—Fairfax County, city of Fairfax and Falls Church, • four.

• *Twenty-seventh*.—Fauquier and Rappahannock, one.

• *Twenty-eighth*.—Fluvanna, Goochland and Louisa, one.

[fol. 303]

• *Twenty-ninth*.—Franklin and Floyd, one.

• *Thirtieth*.—Gloucester, Mathews and Middlesex, one.

• *Thirty-first*.—Greensville, Surry and Sussex, one.

• *Thirty-second*.—Halifax and South Boston, one.

• *Thirty-third*.—Hanover, • King William and New Kent, one.

• *Thirty-fourth*.—Henrico, • three.

• *Thirty-fifth*.—Henry, Patrick and Martinsville, two.

• *Thirty-sixth*.—Isle of Wight, Nansemond, Southampton and Suffolk, • two.

• *Thirty-seventh*.—Northumberland, Westmoreland, Lancaster and Richmond County, one.

• *Thirty-eighth*.—• Newport News, three.

• *Thirty-ninth*.—Lee, one.

• *Fortieth*.—Loudoun, one.

• *Forty-first*.—Lynchburg, one.

• *Forty-second*.—Madison, Culpeper and Orange, one.

• *Forty-third*.—Mecklenburg, one.

• *Forty-fourth*.—Montgomery and Radford, one.

- *Forty-fifth.*—Norfolk County and South Norfolk, two.
  - *Forty-sixth.*—Norfolk City, • *seven.*
  - *Forty-seventh.*—Page and Warren, one.
  - *Forty-eighth.*—Petersburg, • *one.*
  - *Forty-ninth.*—Pittsylvania, two.
  - *Fiftieth.*—Portsmouth, two.
  - *Fifty-first.*—Prince George • and Hopewell, one.
  - *Fifty-second.*—Princess Anne and Virginia Beach, •  
two.
  - *Fifty-third.*—Prince William, • one.
  - *Fifty-fourth.*—Pulaski and Giles, one.
  - *Fifty-fifth.*—Richmond City, • *six.*
  - *Fifty-sixth.*—Roanoke County, one.
  - *Fifty-seventh.*—Roanoke City, two.
  - *Fifty-eighth.*—Rockbridge, Bath and Buena Vista, one.
  - *Fifty-ninth.*—Rockingham and Harrisonburg, • *one.*
  - *Sixtieth.*—Russell, one.
  - *Sixty-first.*—Scott, one.
  - *Sixty-second.*—Shenandoah, Rockingham and Harrison-  
burg, one.
  - *Sixty-third.*—Smyth, one.
- [fol. 304]
- *Sixty-fourth.*—Spotsylvania, Stafford and Fredericks-  
burg, one.
  - *Sixty-fifth.*—Tazewell, one.
  - *Sixty-sixth.*—Washington and Bristol, two.
  - *Sixty-seventh.*—Wise, Dickenson and Norton, two.

And the districts hereby created are hereby numbered  
one (1) to • *sixty-seven (67)*, inclusive.

[fol. 305]

*A BILL to amend and reenact § 24-14, as amended, of the Code of Virginia, relating to State senatorial districts.*

Be it enacted by the General Assembly of Virginia:

1. That § 24-14, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 24-14. The State is hereby divided into thirty-five districts entitled to senators as follows:

First.—Accomack, Northampton, Princess Anne and Virginia Beach, one.

Second.—Norfolk City, \* three.

Third.—Norfolk County, \* South Norfolk, Nansemond and Suffolk, one.

Fourth.—Halifax, South Boston, Charlotte and Prince Edward, one.

Fifth.—\* Henrico, one.

Sixth.—\* Hopewell, Prince George, Surry, \* Sussex, Isle of Wight and Southampton, one.

Seventh.—Brunswick, Greenville, Lunenburg and Mecklenburg, one.

Eighth.—Dinwiddie, Nottoway and Petersburg, one.

Ninth.—Arlington, one.

Tenth.—Portsmouth, one.

Eleventh.—Appomattox, Buckingham, Cumberland, Powhatan, Amherst, Nelson and Amelia, one.

Twelfth.—Campbell and Lynchburg, one.

Thirteenth.—Danville, Henry, Martinsville, Patrick and Pittsylvania, two.

Fourteenth.—Carroll, Floyd, Montgomery, Radford, Grayson and Galax, one.

Fifteenth.—Bristol, \* Scott and Washington, one.

\* Seventeenth.—Buchanan, Russell and Tazewell, one.

\* Sixteenth.—Dickenson, Lee, Wise and Norton, one.

\* *Eighteenth.*—Bland, Giles, Pulaski, *Smyth* and Wythe, one.

\* *Nineteenth.*—Alleghany, Bedford, Botetourt, Buena Vista, Clifton Forge, Covington, Craig and Rockbridge, one.

\* *Twentieth.*—Franklin, \* and Roanoke County, one.

\* *Twenty-first.*—Augusta, Bath, Highland, Staunton and Waynesboro, one.

\* *Twenty-second.*—Harrisonburg, Page, Rappahannock, Rockingham and Warren, one.

\* *Twenty-third.*—Clarke, Frederick, Loudoun, Shenandoah and Winchester, one.

\* *Twenty-fourth.*—Albemarle, Charlottesville, Fluvanna, Greene and Madison, one.

[fol. 306]

\* *Twenty-fifth.*—Fredericksburg, Culpeper, Fauquier, Goochland, Louisa, Orange and Spotsylvania, one.

\* *Twenty-sixth.*—\* *Fairfax county, city of Fairfax, Falls Church and Arlington*, one.

\* *Twenty-seventh.*—Fairfax County, city of Fairfax and Falls Church, \* two.

\* *Twenty-eighth.*—King George, Lancaster, Northumberland, Prince William, Richmond County, Stafford and Westmoreland, one.

\* *Twenty-ninth.*—Caroline, Hanover, King William, Essex, King and Queen, \* *Gloucester, Mathews, Middlesex and New Kent*, one.

\* *Thirtieth.*—\* Newport News, \* one.

\* *Thirty-first.*—Hampton and \* York, one.

\* *Thirty-second.*—Charles City, Chesterfield, Colonial Heights, \* *James City and Williamsburg*, one.

\* *Thirty-third.*—Richmond City, \* two.

\* *Thirty-fourth.*—Roanoke City, one.

\* *Thirty-fifth.*—City of Alexandria, one.



PLAINTIFFS' EXHIBIT 12 (Cont.)

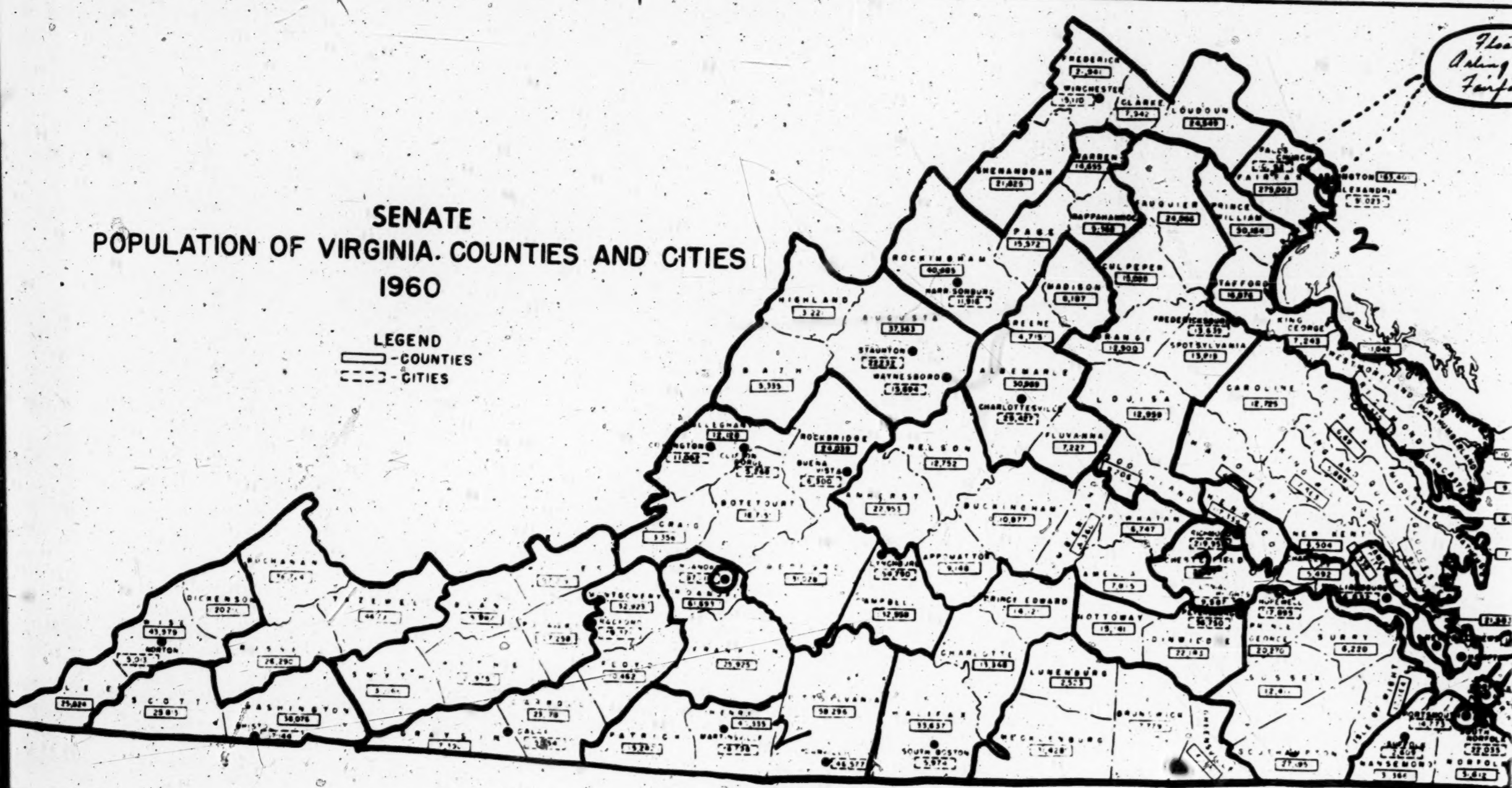


[fol. 308]



[fol. 308]

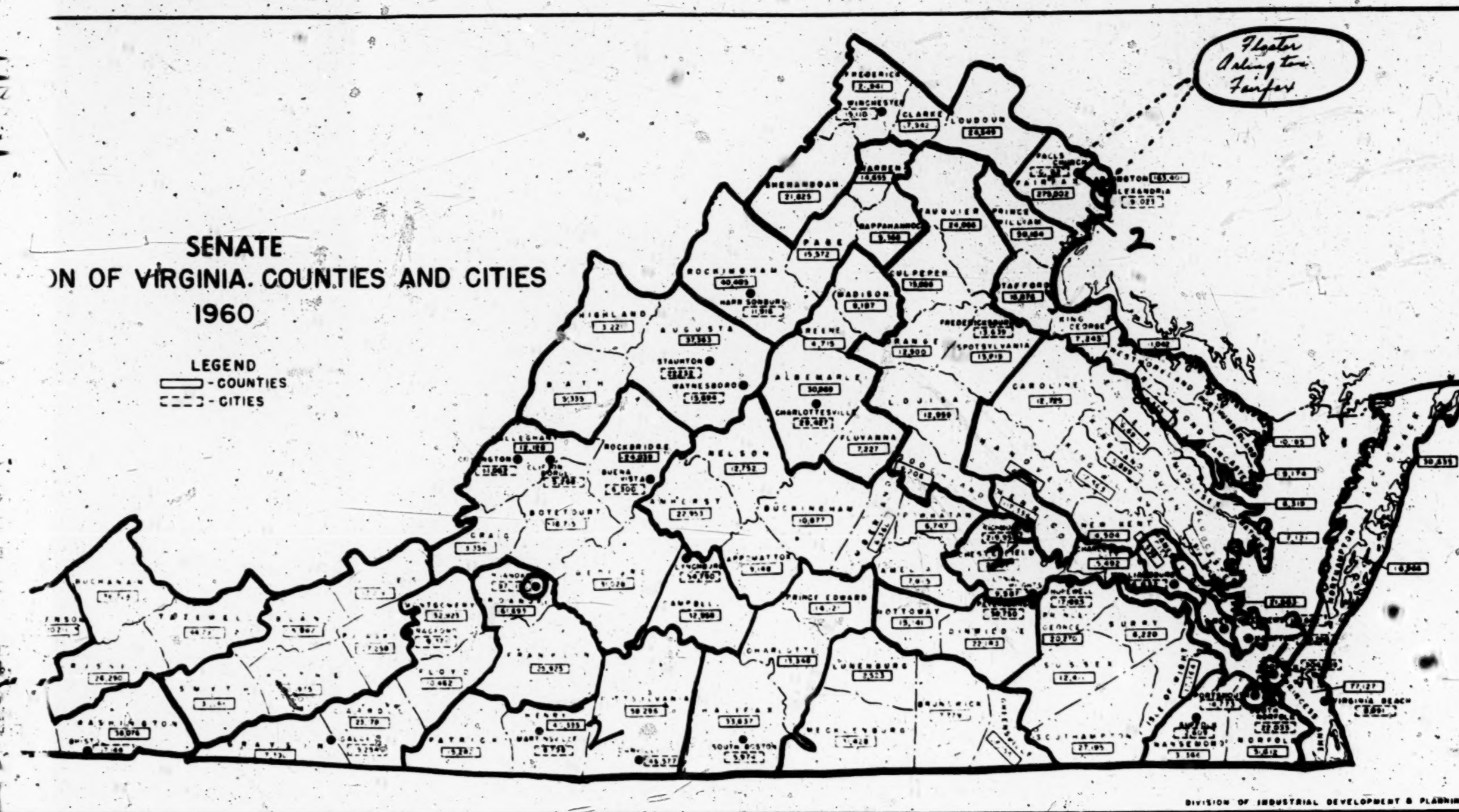
**SENATE  
POPULATION OF VIRGINIA. COUNTIES AND CITIES  
1960**

**LEGEND**  
 - COUNTIES  
 - CITIES



**SENATE**  
**OF VIRGINIA. COUNTIES AND CITIES**  
**1960**

**LEGEND**  
 - COUNTIES  
 - CITIES



[fol. 309]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

## PLAINTIFFS' EXHIBIT 13

Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting

State Virginia

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Accomack	31	195	79	87	112	6	99	163	89	126	212	75	144
Albemarle	31	113	118	116	100	9	97	106	114	110	111	123	117
Alleghany	12	84	105	95	90	11	101	115	78	97	139	90	115
Amelia	8	93	88	91	102	103	103	115	109	112	134	129	132
Amherst	23	109	144	127	127	171	149	145	109	127	162	129	146
Appomattox	9	232	107	170	112	134	123	117	109	113	150	129	140
Arlington	163	81	89	85	91	67	79	74	61	68	73	61	67
Augusta	37	96	107	102	97	11	104	94	108	101	101	118	110
Bath	5	57	105	81	64	11	88	95	108	102	111	118	115
Bedford	31	140	96	118	121	11	117	112	78	95	128	90	109
Bland	6	123	95	109	129	1	115	131	108	120	171	137	154
Botetourt	17	116	105	111	127	112	120	173	78	126	49	90	70
Brunswick	18	107	107	107	118	114	116	97	122	110	131	161	146
Buchanan	37	55	74	65	57	81	69	149	75	112	108	92	100
Buckingham	11	84	107	96	112	134	123	117	109	113	150	129	140
Campbell	33	89	98	94	106	95	101	115	108	112	120	113	117
Caroline	13	124	122	123	118	126	122	104	135	120	122	116	119
Carroll	23	98	89	94	109	144	127	87	140	114	118	114	116
Charles City	5	69	130	100	97	83	91	99	76	88	79	91	85
Charlotte	13	131	107	119	151	134	143	113	117	115	144	148	146

8/28/62 BHT

[fol. 310]

Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting

State Virginia (cont'd)

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Chesterfield	71	172	141	157	75	83	79	104	76	90	49	91	70
Clarke	8	128	171	150	78	116	97	86	139	113	88	148	118
Craig	3	84	105	95	127	112	120	173	78	126	49	90	70
Culpeper	15	153	114	134	115	112	114	97	149	123	110	156	133
Cumberland	6	84	88	86	110	134	122	117	109	113	150	129	140
Dickenson	20	48	74	61	36	90	63	56	104	80	85	144	115
Dinwiddie	22	134	130	132	131	129	130	123	120	122	135	134	135
Essex	7	110	105	108	111	125	118	104	135	120	122	116	119
✓ Fairfax	261 275	100	89	95	96	67	81	63	78	71	42	70	56
Fauquier	24	139	118	127	115	112	114	121	149	135	135	156	146
Floyd	10	146	127	137	37	73	55	87	140	114	118	114	116
Fluvanna	7	117	107	112	157	94	126	115	114	115	135	123	129
Franklin	26	78	127	103	136	73	100	135	79	107	153	76	115
Frederick	22	111	130	121	78	116	97	86	139	113	88	148	118
Giles	17	123	95	109	129	101	115	131	108	120	171	137	154
Gloucester	12	165	105	135	128	125	127	137	96	117	156	116	136
Goochland	9	117	141	129	157	126	142	115	142	129	135	159	147
Grayson	17	104	89	97	121	144	133	155	140	148	175	114	145
Greene	5	121	118	120	100	94	97	106	114	110	111	123	117
Greensville	16	81	120	101	95	112	104	114	127	121	139	136	138

[fol. 311]

Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting

State Virginia (cont'd)

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Halifax	34	103	129	116	117	147	132	80	117	99	100	148	124
Hanover	28	200	122	161	97	126	112	112	135	124	113	116	115
Henrico	117	88	130	109	80	83	82	90	76	83	94	85	90
Henry	40	112	58	85	87	95	91	104	100	102	107	111	109
Highland	3	57	107	82	64	111	88	94	108	101	101	118	110
Isle of Wight	17	138	76	107	161	83	132	63	105	84	65	112	89
James City	12	69	130	100	99	83	91	99	96	98	79	91	85
King and Queen	6	110	105	108	111	125	118	104	135	120	122	116	119
King George	7	143	118	131	118	149	134	104	109	107	122	89	106
King William	8	80	122	101	97	126	112	112	135	124	113	116	115
Lancaster	9	120	118	119	154	149	152	95	109	102	108	89	99
Lee	26	92	63	78	80	111	96	92	130	111	107	93	100
Loudoun	25	138	118	128	122	112	117	157	149	153	162	156	159
Louisa	13	124	127	126	169	118	144	115	142	129	135	159	147
Lunenburg	13	161	88	125	172	103	138	97	122	110	131	161	146
Madison	8	121	114	118	115	94	105	97	114	106	110	123	117
Mathews	7	116	105	111	128	125	127	137	96	117	156	116	136
Mecklenburg	31	71	107	89	74	114	94	99	122	111	126	161	144
Middlesex	6	116	105	111	111	125	118	137	135	136	156	116	136
Montgomery	33	96	68	82	94	73	84	86	79	83	94	76	85

[fol. 312]

**Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting**

**State Virginia (cont'd)**

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Nansemond	31	77	76	77	74	83	79	151	105	128	156	112	134
Nelson	13	123	144	134	148	171	160	97	109	103	111	129	120
New Kent	5	69	130	100	99	83	91	99	96	98	79	91	85
Norfolk	52	78	60	69	128	72	100	60	75	68	108	135	122
Northampton	17	39	79	59	45	86	66	65	89	77	83	75	79
Northumberland	10	103	118	111	124	149	137	95	109	102	108	89	99
Nottoway	15	93	88	91	102	103	103	115	120	118	134	134	134
Orange	13	153	114	134	115	118	117	97	142	120	110	159	135
Page	16	93	171	132	104	89	97	111	101	106	131	113	122
Patrick	15	120	89	105	153	95	124	104	100	102	107	111	109
Pittsylvania	58	89	134	112	79	95	87	100	100	100	136	111	124
Powhatan	7	75	141	108	75	103	89	115	109	112	134	129	132
Prince Edward	14	145	88	117	110	103	107	113	117	115	144	148	146
Prince George	20	117	120	119	84	112	98	92	127	110	89	136	113
Prince William	50	171	89	130	110	67	89	96	109	103	79	89	84
Princess Anne	77	179	79	129	149	86	118	78	89	84	93	75	84
Pulaski	27	120	95	108	118	101	110	120	108	114	146	137	142
Rappahannock	5	93	114	104	115	89	102	121	101	111	135	113	124
Richmond	6	120	118	119	154	149	152	95	109	102	108	89	99
Roanoke	62	105	68	87	69	73	71	80	79	80	113	76	95

[fol. 313]

**Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting**

State Virginia (cont'd)

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Rockbridge	24	141	96	119	161	112	137	95	78	87	111	90	101
Rockingham	40	118	148	133	131	89	110	145	101	123	151	113	132
Russell	26	88	74	81	150	81	116	124	75	100	85	92	89
Scott	26	87	63	75	100	111	106	120	130	125	98	93	96
Shenandoah	22	98	130	114	117	116	117	157	139	148	182	148	165
Smyth	31	101	87	94	96	89	93	110	99	109	128	114	121
Southampton	27	78	76	77	90	83	87	125	105	115	146	112	129
Spotsylvania	14	130	127	129	144	118	131	138	142	140	89	159	124
Stafford	17	143	127	135	110	118	114	96	109	103	89	89	89
Surry	6	117	120	119	84	112	98	92	127	110	89	136	113
Sussex	12	81	120	101	95	112	104	114	127	121	139	136	138
Tazewell	45	55	74	65	75	81	78	70	75	73	89	97	91
Warren	15	128	171	150	104	89	97	111	101	106	131	113	122
Washington	38	106	87	97	113	89	101	124	99	112	98	93	96
Westmoreland	11	103	118	111	124	149	137	95	109	102	108	89	99
Wise	44	48	63	56	83	90	87	118	104	111	107	144	126
Wythe	22	101	95	98	117	101	109	142	108	125	181	137	159
York	22	69	93	81	99	125	112	99	96	98	79	73	76

[fol. 314]

**Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting**

State Virginia (cont'd)

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Alexandria	91	81	89	85	100	67	84	54	134	94	87	109	98
Bristol	17	106	87	97	113	89	101	121	99	112	98	93	96
Buena Vista	6	140	96	118	163	112	138	95	78	87	111	90	101
Charlottesville	29	113	118	116	100	94	97	128	114	121	135	123	129
Clifton Forge	5	84	105	95	90	112	101	115	78	97	139	90	115
Colonial Heights	10							104	76	90	49	91	70
Covington	11										139	90	115
Danville	47	89	133	111	104	95	102	95	100	98	85	111	98
Fairfax City	14										42	70	56
Falls Church	10							63	78	71	42	70	56
Franklin City	7										146	112	129
Fredericksburg	14	130	127	129	144	118	131	138	142	140	89	159	124
Galax	5										175	114	145
Hampton	89	97	93	95	92	87	90	54	80	67	44	111	78
Harrisonburg	12				131	89	110	145	101	123	151	113	132
Hopewell	18				84	112	98	92	127	110	89	136	113
Lynchburg	55	70	98	84	60	95	78	118	103	113	123	113	118
Martinsville	19				87	95	91	104	100	102	107	111	109
Newport News	114	102	93	98	127	87	107	121	88	105	105	73	89
Norfolk	305	61	76	69	75	93	84	93	78	86	78	65	72

[fol. 315]

**Index Values of the Right to Vote for Members of the Legislature  
by Counties, 1910, 1930, 1950, 1960,  
as Percentages of the State-Wide Average, Following Redistricting,**

State Virginia (cont'd)

County		1910			1930			1950			1960		
Name	1960 Pop. (Thousands)	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature	Lower House	Upper House	Legis- lature
Norton	5										107	144	126
Petersburg	37	85	130	108	85	129	107	123	120	122	135	134	135
Portsmouth	115	62	60	61	106	72	89	83	104	94	69	86	78
Radford	9	96	68	82	94	73	84	86	79	83	94	76	85
Richmond	220	81	81	81	79	99	89	101	108	105	94	90	92
Roanoke	97	59	68	64	70	73	72	72	90	81	82	102	92
South Boston	6										100	148	124
South Norfolk	22				128	72	100	60	75	68	108	135	122
Staunton	22	96	107	102	97	111	104	94	108	101	101	118	110
Suffolk	13				74	83	79	144	105	125	154	112	133
Virginia Beach	8										93	75	84
Waynesboro	16							94	108	101	101	118	110
Williamsburg	7	69	130	100	99	83	91	99	96	98	79	91	85
Winchester	15	111	130	121	78	116	97	86	139	113	88	148	118

[fol. 316]

Average Values of the Right to Vote for Representation  
in the Virginia General Assembly Before and After the  
1962 Redistricting (Revision of Page 64 of Devaluation Study)

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 14

State Virginia8/28/62  
JH

Census Year	Units by Categories of Population Size			Prior to Reapportionment				
				Proportionate Share of Voting Strength of Legislature No. of Members		Average Values of the Vote for Representa- tion in		
	Category	No. of Units	Total Pop. in Census Year	Lower House	Upper House	Lower House	Upper House	Legis- lature
1960	Under 25,000	86	1,083,229	33.53	13.66	123	125	124
	25,000-99,999	36	1,573,213	41.95	16.95	106	107	107
	100,000-499,999	7	1,310,007	24.52	9.39	74	71	73
	500,000 and over	0	0	0	0	-	-	-
	Totals and Averages	129	3,966,949	100.00	40.00	100	100	100

Census Year	Units by Categories of Population Size			After Reapportionment				
				Proportionate Share of Voting Strength of Legislature: No. of Members		Average Values of the Vote for Representa- tion in		
	Category	No. of Units	Total Pop. in Census Year	Lower House	Upper House	Lower House	Upper House	Legis- lature
1960	Under 25,000	90	1,130,483	33.70	13.83	118	121	120
	25,000-99,999	35	1,540,044	40.55	16.49	104	106	105
	100,000-499,999	7	1,296,422	25.75	9.68	79	74	77
	500,000 and over	0	0	0	0	-	-	-
	Totals and Averages	132	3,966,949	100.00	40.00	100	100	100

[fol. 317]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

## PLAINTIFFS' EXHIBIT 15

8/28/62 GH\*\*

Ratio Largest to Smallest  
Population Per Delegate  
Virginia General Assembly

1964*	Smallest population/representative	= 21,825
	Largest population/representative	= 95,064
	Ratio largest to smallest	= 4.36
1955	Smallest population/representative	= 14,057
	Largest population/representative	= 82,233
	Ratio largest to smallest	= 5.85
1935	Smallest population/representative	= 13,409
	Largest population/representative	= 40,661
	Ratio largest to smallest	= 3.03
1915	Smallest population/representative	= 8,904
	Largest population/representative	= 43,361
	Ratio largest to smallest	= 4.87

\* Acts, 1962, p. 1269.

\*\* Pencil notation.

[fol. 318]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

## PLAINTIFFS' EXHIBIT 16

8/28/62 GH\*\*

Ratio Largest to Smallest  
Population Per Delegate  
Virginia General Assembly

1964*	Smallest population/representative	= 61,730
	Largest population/representative	= 163,401
	Ratio largest to smallest	= 2.65

\*\* Pencil notation.

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1955 Smallest population/representative = 55,637  
Largest population/representative = 185,449  
Ratio largest to smallest = 2.43

1935 Smallest population/representative = 35,365  
Largest population/representative = 89,979  
Ratio largest to smallest = 2.54

1915 Smallest population/representative = 30,204  
Largest population/representative = 85,934  
Ratio largest to smallest = 2.85

• Acts, 1962, p. 1266.

[fol. 319]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 17

UNITED STATES CENSUS OF  
POPULATION

1960

8/28/62 GH'

United States Summary

NUMBER OF INHABITANTS

U.S. DEPARTMENT OF COMMERCE  
BUREAU OF THE CENSUS

[fol. 320]

Number of Inhabitants

Table 24.—POPULATION OF COUNTIES IN THE UNITED STATES  
AND THE COMMONWEALTH OF PUERTO RICO

1960 AND 1950

[State economic area in which county is located is shown in parenthesis following county name. Asterisk (\*) denotes county with boundary change between 1950 and 1960 Cen-

• Penciled notation.

uses; for boundary changes, see table 7 of the corresponding reports for appropriate State. Minus (-) denotes decrease.

Percent not shown where less than 0.1]

State and county	1960	1950	Percent increase, 1950 to 1960
VIRGINIA			
Total .....	3,966,949	*3,318,680	19.5
Accomack (9) .....	30,635	33,832	-9.4
Albemarle (5) .....	30,969	26,662	16.2
Alleghany (3) .....	12,128	*23,139	-47.6
Amelia (6) .....	7,815	7,908	-1.2
Amherst (F) .....	22,953	20,332	12.9
Appomattox (6) .....	9,148	8,764	4.4
Arlington (B) .....	163,401	135,449	20.6
Augusta (4) .....	37,363	34,154	9.4
Bath (3) .....	5,335	6,296	-15.3
Bedford (6) .....	31,028	29,627	4.7
Bland (2) .....	5,982	6,436	-7.1
[fol. 321]			
Botetourt (3) .....	16,715	15,766	6.0
Brunswick (7) .....	17,779	20,136	-11.7
Buchanan (1) .....	36,724	35,748	2.7
Buckingham (6) .....	10,877	12,288	-11.5
Campbell (F) .....	32,958	28,877	14.1
Caroline (8) .....	12,725	12,471	2.0
Carroll (2) .....	23,178	*26,695	-13.2
Charles City (8) .....	5,492	4,676	17.5
Charlotte (7) .....	13,368	14,057	-4.9
Chesterfield (C) .....	71,197	40,400	76.2
Clarke (4) .....	7,942	7,074	12.3
Craig (3) .....	3,356	3,452	-2.8
Culpeper (5) .....	15,088	13,242	13.9
Cumberland (6) .....	6,360	7,252	-12.3
Dickenson (1) .....	20,211	23,393	-13.6
Dinwiddie (6) .....	22,183	18,839	17.8
Essex (8) .....	6,690	6,530	2.5
Fairfax (B) .....	275,002	98,557	179.0
Fauquier (5) .....	24,066	21,248	13.3
Floyd (3) .....	10,462	11,351	-7.8

See footnotes at end of table, p. 202.

State and county	1960	1950	Percent increase, 1950 to 1960
Fluvanna (6) .....	7,227	7,121	1.5
Franklin (7) .....	25,925	24,560	5.6
Frederick (4) .....	21,941	17,537	25.1
Giles (3) .....	17,219	18,956	-9.2
Gloucester (8) .....	11,919	10,343	15.2
Goochland (6) .....	9,206	8,934	3.0
Grayson (2) .....	17,390	*21,379	-18.7
Greene (5) .....	4,715	4,745	-0.6
Greensville (10) .....	16,155	16,319	-1.0
Halifax (7) .....	33,637	*41,442	-18.8
Hanover (8) .....	27,550	21,985	25.3
Henrico (C) .....	117,339	57,340	104.6
Henry (7) .....	40,335	31,219	29.2
Highland (3) .....	3,221	4,069	-20.8
Isle of Wight (10) ....	17,164	14,906	15.1
James City (8) .....	11,539	6,317	82.1
King and Queen (8) ....	5,889	6,299	-6.5
King George (8) .....	7,243	6,710	7.9
King William (8) .....	7,563	7,589	-0.3
Lancaster (8) .....	9,174	8,640	6.2
Lee (1) .....	25,824	36,106	-28.5
Loudoun (5) .....	24,549	21,147	16.1
Louisa (6) .....	12,959	12,826	1.0
Lunenburg (7) .....	12,523	14,116	-11.3
Madison (5) .....	8,187	8,273	-1.0
Mathews (8) .....	7,121	7,148	-0.4
Mecklenburg (7) .....	31,428	33,497	-6.2
Middlesex (8) .....	6,319	6,715	-5.9
Montgomery (3) .....	32,923	29,780	10.6
Nansemond (10) .....	31,366	25,238	24.3
Nelson (6) .....	12,752	14,042	-9.2
New Kent (8) .....	4,504	3,995	12.7
Norfolk (D) .....	51,612	99,937	-48.4
Northampton (9) .....	16,966	17,300	-1.9
Northumberland (8) ....	10,185	10,012	1.7
Nottoway (6) .....	15,141	15,479	-2.2
Orange (5) .....	12,900	12,755	1.1
Page (4) .....	15,572	15,152	2.8
Patrick (7) .....	15,282	15,642	-2.3
Pittsylvania (7) .....	58,296	66,096	-11.8
Powhatan (6) .....	6,747	5,556	21.4

State and county	1960	1950	Percent increase, 1950 to 1960
Prince Edward (6) .....	14,121	15,398	-8.3
Prince George (10) .....	20,270	19,679	3.0
Prince William (5) .....	50,164	22,612	121.8
Princess Anne (D) .....	176,124	142,277	80.1
Pulaski (3) .....	27,258	27,758	-1.8
Rappahannock (5) .....	5,368	6,112	-12.2
Richmond (8) .....	6,375	6,189	3.0
Roanoke (A) .....	61,693	41,486	48.7
Rockbridge (3) .....	24,039	23,359	2.9
Rockingham (4) .....	40,485	35,079	15.4
Russell (2) .....	26,290	26,818	-2.0
Scott (2) .....	25,813	27,640	-6.6
Shenandoah (4) .....	21,825	21,169	3.1
Smyth (2) .....	31,066	30,187	2.9
Southampton (10) .....	27,195	26,522	2.5
Spotsylvania (5) .....	13,819	11,920	15.9
Stafford (5) .....	16,876	11,902	41.8
Surry (10) .....	6,220	6,220	....
Sussex (10) .....	12,411	12,785	-2.9
Tazewell (1) .....	44,791	47,512	-5.7
Warren (4) .....	14,655	14,801	-1.0
Washington (2) .....	38,076	37,536	1.4
Westmoreland (8) .....	11,042	10,148	8.8
Wise (1) .....	43,579	56,336	-22.6
Wythe (2) .....	21,975	23,327	-5.8
York (E) .....	21,583	11,750	83.7

#### Independent Cities

Alexandria (B) .....	91,023	61,787	47.3
Bristol (2) .....	17,144	15,954	7.5
Buena Vista (3) .....	6,300	5,214	20.8
Charlottesville (5) .....	29,427	25,969	13.3
Clifton Forge (3) .....	5,268	5,795	-9.1
Colonial Heights (6) ..	9,587	6,077	57.8
Covington (3) .....	11,062	5,860	88.8
Danville (7) .....	46,577	35,066	32.8
Falls Church (B) .....	10,192	7,535	35.3
Fredericksburg (5) .....	13,639	12,158	12.2
Galax (2)* .....	5,254	5,248	0.1

State and county	1960	1950	Percent increase, 1950 to 1960
Hampton (E) .....	89,258	5,966	1,396.1
Harrisonburg (4) .....	11,916	10,810	10.2
Hopewell (10) .....	17,895	10,219	75.1
Lynchburg (F) .....	54,790	47,727	14.8
Martinsville (7) .....	18,798	17,251	9.0
Newport News (E) ....	113,662	42,358	168.3
Norfolk (D) .....	305,872	213,513	43.3
Norton (1)* .....	4,996	4,315	15.8
Petersburg (6) .....	36,750	35,054	4.8
Portsmouth (D) .....	114,773	80,039	43.4
Radford (3) .....	9,371	9,026	3.8
Richmond (C) .....	219,958	230,310	-4.5
Roanoke (A) .....	97,110	91,921	5.6
South Boston (7) .....	5,974	6,057	-1.4
South Norfolk (D) ....	22,035	10,434	111.2
Staunton (4) .....	22,232	19,927	11.6
Suffolk (10) .....	12,609	12,339	2.2
Virginia Beach (D) ....	8,091	5,390	50.1
Waynesboro (4) .....	15,694	12,357	27.0
Williamsburg (8) .....	6,832	6,735	1.4
Winchester (4) .....	15,110	13,841	9.2

† The revised population total for Princess Anne County is 77,127; for Norfolk city, 304,869; and for Norton city, 5,013. These errors were discovered too late for correction in the detailed distributions.  
[fol. 322]

\* Divisions are designated as parishes.

<sup>6</sup> Includes population (55,028) of Elizabeth City County which was consolidated with Hampton city in 1952, and of Warwick County (39,875) which was incorporated as a city in 1952 and consolidated with Newport News city in 1958.

<sup>7</sup> Includes population (5,860) of Covington town which became independent of the county in 1952.

<sup>8</sup> Galax town, located in Carroll and Grayson Counties, became an independent city in 1953. Figure for Carroll County includes population (2,603) of that part of town in the county and for Grayson County population (2,645) of that part in the county.

<sup>9</sup> Includes population (6,057) of South Boston town which became independent of the county in 1960.

<sup>10</sup> Includes population (5,390) of Virginia Beach town which became independent of the county in 1952.

<sup>11</sup> Includes population (4,315) of Norton town which became independent of the county in 1954.

[fol. 323]

**PLAINTIFF'S EXHIBIT 18**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**PLAINTIFFS' EXHIBIT 18**

**Civil Action No. 2604**

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**HARRISON MANN, et al., Plaintiffs,**

**vs.**

**LEVIN NOCK DAVIS, et al., Defendants.**

---

**Charlottesville, Virginia  
August 28, 1962**

**Deposition of Ralph Eisenberg**

[fol. 324]

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[fol. 326]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
Civil Action No. 2604

HARRISON MANN, et al., Plaintiffs,

vs.

LEVIN NOCK DAVIS, et al., Defendants.

Charlottesville, Virginia  
August 28, 1962

The deposition of RALPH EISENBERG, taken pursuant to notice at 2:00 o'clock, p.m., in the Conference Room, Minor Hall, University of Virginia, before Gilbert Halasz, Notary Public in and for the State of Virginia At-Large, to be read in evidence on behalf of the plaintiffs.

Appearances:

Edmund D. Campbell, Esquire, For the Plaintiffs  
Henry E. Howell, Esquire, For Intervening Petitioners  
Honorable Robert Y. Button, Attorney General  
David J. Mays, Esquire, For Certain Defendants.

[fol. 327] Whereupon, RALPH EISENBERG being first duly sworn by the Notary Public, was examined and testified on his oath as follows:

Direct examination.

By Mr. Campbell:

Q. Will you state your name, sir?

A. Ralph Eisenberg.

Q. Your residence, sir?

A. Charlottesville, Virginia.

Q. Your occupation?

A. Assistant Professor of Political Science.

Q. Do you hold a Ph.D. degree?

A. Yes, I do.

Q. Doctor, are you testifying as a result of subpoena which was served upon you in this case?

A. Yes, I am.

Q. How long have you been at the University of Virginia, sir?

A. I have been here since August 1, 1960.

Q. Where did you obtain your education in political science?

A. I received Bachelor's and Master's degrees from the University of Illinois and Master's and Doctoral degrees from Princeton University.

Q. How old are you?

[fol. 328] A. Thirty two.

Q. Are you connected in any way with the Bureau of Public Administration of the University of Virginia?

A. Yes, I am. I hold joint appointment as—I think that's right—as Research Associate in the Bureau of Public Administration and Assistant Professor of Political Science in the Department of Political Science at the University.

Q. Will you state briefly what the Bureau of Public Administration does, sir?

A. The Bureau of Public Administration is an agency of the University which is concerned with research into state and local government administration and it performs functions of research initiated by staff members and performing research in response to requests by local governments or by state agencies. It also participates in training programs of various kinds with state and local officials.

Q. Did the Bureau of Public Administration, while you were connected with it, receive a request to serve in a research capacity with the Commission appointed by the Governor of Virginia to make a report and recommendation on redistricting the State, the General Assembly of Virginia?

A. Yes, it is my understanding.

Q. Is that the Commission which was headed by Mr. [fol. 329] Lawrence Hoover, Chairman?

A. Yes, it was.

Q. And did the Bureau of Public administration accept that request or appointment?

A. Yes, we did.

Q. Did you work on behalf of the Bureau in serving the Hoover Commission?

A. Yes, I did.

Q. What other members, what other representatives, of the Bureau of Public Administration acted with you?

A. Well, Weldon Cooper, the Director of the Bureau, was also a member of the Commission on Redistricting; and as Director of the Bureau, I participated in research activities which the Bureau conducted for the Commission. We also had student assistants who performed a lot of the statistical work under my direction.

Q. Were you in charge of the work for the Bureau of Public Administration at this particular work?

A. Well, under the overall direction of Mr. Cooper, yes.

Q. Have you, Mr. Eisenberg, made a study of problems of legislative apportionment and reapportionment or legislative districting and redistricting throughout the United States?

[fol. 330] A. Yes, I have, in conjunction with Mr. Paul T. David of the Department of Political Science of the University.

Q. Over what period of time have you made that study?

A. Since the fall of 1960. We are still involved in these studies.

Q. Have you, in connection with your work, issued certain publications or monographs?

A. Yes, we have.

Q. Can you list some of them?

A. Yes. I think the first one to appear was an article in the University of Virginia Newsletter of April 15, 1961 which considered the question of the adequacy of Virginia apportionment on the basis of the 1960 census.

Q. I show you a copy of that, or what appears to be a copy of that, document and ask you if that is the paper to which you refer?

A. Yes, it appears to be.

Mr. Campbell: I would like to offer this document as Plaintiff's Exhibit 1.

(The document referred to was marked Plaintiff's Exhibit No. 1 for Identification.)

By Mr. Campbell:

Q. What other documents, monographs or reports have [fol. 331] you made on the subject?

A. There was a monograph entitled, "Devaluation of the Urban and Suburban Vote" by Mr. David and myself, published in late December, 1961.

Q. Any others, sir?

A. There is a second volume to this Devaluation study which is to be published shortly, probably in early September.

Q. Any others?

A. Well, there is an article to be published in the National Civic Review, in September, I believe, and there is a paper which Mr. David and I are completing that will be delivered next week at a meeting of the American Political Science Association.

Q. The article to which you referred which will be published in the National Civic Review, is that what you said?

A. Yes.

Q. Was that written by you, sir?

A. Yes, it was.

Q. Was the Bureau of Public Administration requested by the Hoover Commission to engage in research on the possible methods of redistricting the General Assembly following the 1960 census?

A. I think their charge to us was to undertake research activities for them and to develop a research plan that [fol. 332] they would consider. We developed this research plan which they subsequently approved.

Q. The research plan, did that offer suggestions as to what you would do for the Commission?

A. Yes, it did. It listed a number of research activities that we were suggesting to the Commission.

Q. Was there included in those activities the preparation of suggested plans for redistricting the State?

A. Yes, there was.

Q. Did the Commission in connection with any plans which you might prepare for redistricting the State give you any guidelines?

A. They generally provided us with guidelines that we had suggested in our proposed research plan.

Q. I am referring, for example, to the question of whether or not a county might be divided in redistricting, that sort of guideline.

A. Yes.

Q. Will you state what guidelines were given to the Bureau on that subject by the Commission?

A. We were instructed to use counties and cities as the basic units for representation. We were instructed to continue to not divide any counties and cities in constructing legislative districts.

[fol. 333] We were instructed to emphasize single-member districts as opposed to multi-member districts where possible. We were instructed to redistrict without using floater districts although they could be employed where it was necessary.

We were instructed to proceed with the assumption of constructing districts that least disturbed already existing districts.

We were also instructed to use population as the primary criterion in constructing districts, although economic and cultural interests and compactness were to be employed as additional considerations.

Q. Were you also instructed that districts must be contiguous, or was that assumed?

A. I would say that was assumed.

Q. Now, did you attempt to carry out that mandate of those instructions of the Hoover Commission in the preparation of alternate plans for their consideration?

A. Yes, we did.

Q. I show you a document which is entitled, "Report No. 3 to Commission on Redistricting, General Analysis of Problems of Reapportionment and Redistricting, July 10,

1961," and ask you if that was one of the documents prepared by the Bureau for the Hoover Commission?  
[fol. 334] A. Yes, it was.

Q. Were you the author of that document, Doctor Eisenberg?

A. Yes, I was. Mr. Cooper may have made some style changes; I don't recall.

Mr. Campbell: I offer this document as Plaintiff's Exhibit 2.

(The document referred to was marked Plaintiff's Exhibit No. 2 for Identification.)

By Mr. Campbell:

Q. Did this report express your views or the Bureau of Public Administration on the subject matter contained therein?

A. Yes, they expressed my views. I suppose by implication the views of the Bureau.

Q. I would like to call your attention specifically to page 13 of this report, Plaintiff's Exhibit No. 2, and read to you one paragraph in that report as follows:

"Effective redistricting in Virginia would include the following guidelines: Districts must be contiguous. This requirement is absolute since contiguity either exists or it does not. An effort should be made to obtain compact districts. This will not be easy because of the large number of counties and cities, the peculiar shape of adjacent govern- [fol. 335] mental units, and the attempt to obtain districts of nearly equal population size. Geographical and economic interests should be taken into consideration as much as possible. The districts created should be as nearly equal in population as practicable, measured by the population per representative for each District. It is recommended that the deviation from the ideal size be as little as possible, with most deviations within 15 percent of ideal size and exceptions in the most difficult situations within 25 percent. It is indeed difficult, if not impossible, to justify deviations beyond 25 percent."

Mr. Eisenberg, in preparing your plans which were submitted to the Hoover Commission, did you attempt insofar as practicable to follow those criteria?

A. Yes, we did.

Q. Did you prepare a document which I hand to you date July 17, 1961, entitled, "House of Delegates, Alternative Districting Plans," on the first page, and on the second page under the same date, "House of Delegates, Plan A."

A. Yes, I did.

Q. Was that document submitted to the Hoover Commission?

A. Yes, it was, on July 17.

Mr. Campbell: We offer that in evidence as Plaintiff's Exhibit No. 3.

[fol. 336] (The document referred to was marked Plaintiff's Exhibit No. 3 for Identification.)

By Mr. Campbell:

Q. Were you able, in the preparation of Plan A, to keep the deviations generally speaking within 15 percent of population?

A. I don't think we succeeded entirely in keeping all deviation within 15 percent.

Q. I call your attention to page 2 of that document. The last sentence on that page reads: Extremes of over and under representation in Plan A are 1.17 and .83.

Is that accurate?

A. That's right; it is.

Q. In other words, the maximum deviation in that plan would be 17 percent, roughly speaking?

A. I'd say roughly speaking, according to the use of these index figures.

Q. Now, sir, in preparing this plan for the Hoover Commission, you used certain population figures, did you not, for the State?

A. Yes, we did.

Q. Population figures for cities and counties?

A. That's right.

[fol. 337] Q. What population figures did you use, sir?

A. We used those that appeared in the preliminary census reports for Virginia.

Q. Published by the United States—

A. Published by the Bureau of the Census.

Q. Bureau of the Census of the United States Department of Commerce?

A. That's right.

Q. Do you have a copy of that document?

A. Yes, but not with me.

Q. Do you know under what date that document is issued?

A. No, I don't; not offhand.

Q. Would you have it in your office?

A. It is in an office here if you would like me to get it.

Q. Dr. Eisenberg, will you see if you can locate that document?

A. Yes, sir.

It was issued under date of November 30, 1960. You might want to give the title.

Q. You have handed me, at my request, Mr. Eisenberg, a document entitled, "1960 Census of Population, Advance Reports, Final Population Counts, November 1960," bearing the letters PC (A-1)—48, Virginia. And at the bottom of the first page, "United States Department of Commerce. [fol. 338] Frederick Mueller, Secretary."

Is this the document which contains the population figures which were used by the Bureau in making its various computations for the Hoover Commission?

A. Yes, it was.

Q. Is that the document that was used in making the statistical analyses which the Bureau made on that subject or which you made on that subject?

A. Yes, this is the basis for the statistics that we prepared for the Hoover Commission.

Mr. Campbell: I would like to offer this document in evidence as Plaintiff's Exhibit No. 4 and request permission to substitute for this document one which I will procure from the Bureau of Census so that I do not take it away from Dr. Eisenberg.

Mr. Mays: Can't we have the reporter identify it?

Mr. Campbell: Mark this one, yes.

May I ask counsel if, subject to the right to check on the identification, we may substitute another printed copy for this document.

Mr. Mays: And may we have one?

Mr. Campbell: Yes, sir; I will send you one. I would like to give this one back to Dr. Eisenberg.

Mr. Mays: Yes, of course.

[fol. 339] (The document referred to was marked Plaintiff's Exhibit No. 4 for Identification.)

By Mr. Campbell:

Q. In the preparation of Plan A, which has been identified as Plaintiff's Exhibit 3, did the Bureau of Public Administration give particular consideration to the location of existing districts?

Mr. Mays: Location of what?

Mr. Campbell: Existing districts, then-existing districts in the State.

The Witness: The objective of Plan A for both the House and the Senate was to conceive a districting arrangement which most nearly approximated an ideal scheme.

By Mr. Campbell:

Q. Would you say an ideal scheme under the criteria which were referred to on page 13 of your Report No. 3?

A. Well, yes, certainly under those criteria and even beyond that. In other words, a districting arrangement which would have the least amount of deviation from the ideal size of districts throughout the State. Therefore, in comparison with the rest of the plans, it was concerned least with preserving existing districts.

Q. Was it equally concerned, was it concerned equally [fol. 340] with the other plans submitted by the Bureau in the factors of contiguity, geographical and economic interests, and the other criteria which were mentioned on page 13 of your report?

A. It was within the overall criteria, criterion of the greatest equality of population size per district. In other

words, population equality per district was the primary criterion. These others were operative within that context.

Q. You also prepared a Plan B for the House of Delegates?

A. Yes, sir.

Q. I show you a document and ask you if this is Plan B which was prepared?

A. Yes, it is.

Mr. Campbell: I offer that as Plaintiff's Exhibit No. 5.

(The document referred to was marked Plaintiff's Exhibit No. 5 for Identification.)

By Mr. Campbell:

Q. Will you state the difference in objectives in Plan A and in Plan B?

A. Plan B was conceived as a plan which permitted a greater deviation from ideal district size than Plan A.

Q. You say, "ideal district size". You mean ideal district [fol. 341] population size?

A. That's right. The greater deviation from what the state-wide average population per district should be if the State's population were divided by one hundred.

Q. You say, one hundred. Why one hundred?

A. Because of one hundred delegate seats. I suppose we had attempted to make an intermediate plan between the best plan for the House and a plan which deviated no more than 25 percent.

Q. Were those plans A-1 plans, A-2?

A. No, it was A and B.

Q. A and B?

A. Et cetera. There was no "C", it turned out, possible for the House because Plan B deviated past the extreme percent set for ourselves of 25 percent.

Q. In Plan B, did most of the deviations come within that 25 percent range?

A. I think so.

Q. Now, in Plan B, did you attempt to preserve, insofar as practicable, the existing districts?

A. Yes, we did, within that deviation limitation.

Q. Deviation formula?

A. That's right.

Q. What was the maximum deviation in Plan B?

[fol. 342] A. According to our indexes, it was 1.35 and .61 from an idea of 1.00.

Q. Now, from the point of view of, if we leave out of consideration the question of preserving existing districts, was there much difference in Plan A and B insofar as the criteria of contiguity, geographical and economic interests and compactness were concerned?

A. The only ones that differ in the application of those criteria would be those necessary as a result of using a greater allowable population deviation.

Q. But—

A. In other words, what we were trying to do was within the population deviations that we would tolerate, economic and geographic considerations were considered equally.

Q. I now hand you another document dated August 7, 1961, entitled "House Plan B, Summary of Changes to Existing House Districts." Did the Bureau of Public Administration prepare that document for the Hoover Commission?

A. Yes, we did.

(The document referred to was marked Plaintiff's Exhibit No. 6 for Identification.)

Mr. Campbell: I offer that as Plaintiff's Exhibit No. 6.

[fol. 343] By Mr. Campbell:

Q. Does this document accurately state what it purports to state? That is a summary of changes to existing House Districts proposed in Plan B itself?

A. Yes, it does, as far as I know.

Q. Did you similarly prepare for the State Senate proposed alternate districting plans?

A. Yes, we did.

Q. I show you a document dated July 17, 1961 entitled, "State Senate, Alternate Districting Plans," and on the second page thereof, Plan A, and ask you if this document

was prepared by the Bureau of Public Administration for the Hoover Commission?

A. Yes, it was.

(The document referred to was marked Plaintiff's Exhibit No. 7 for Identification.)

Mr. Campbell: I offer that as Plaintiff's Exhibit No. 7.

By Mr. Campbell:

Q. Did the Bureau of Public Administration prepare an alternate Plan B for the Senate?

A. Yes, we did.

Q. Do you have that document with you?

A. Yes, I do.

[fol. 344] (The document referred to was marked Plaintiff's Exhibit No. 8 for Identification.)

Mr. Campbell: I would like to offer this as Plaintiff's Exhibit No. 8.

By Mr. Campbell:

Q. I now show you a document which, under date of August 7, 1960, is entitled, "Senate Plan B, Summary of Changes to Existing Senate Districts." Did you prepare that or did the Bureau prepare that?

A. Under date of August 7, 1961?

Q. Yes.

A. We did.

Q. Was that submitted to the Commission?

A. Yes, it was, in response to their request.

(The document referred to was marked Plaintiff's Exhibit No. 9 for Identification.)

Mr. Campbell: Offer that as Plaintiff's Exhibit 9.

By Mr. Campbell:

Q. Now, in the preparation of these documents which have just been offered in evidence for the Senate respecting Plans A and Plan B, and the summary of changes, did the

Bureau attempt to follow with respect to the Senate the [fol. 345] same general criteria that it followed with respect to the House of Delegates in respect to the preparation of Plans A and Plan B?

A. Yes, we did. There is a Senate Plan C.

Q. You have just referred to a Senate Plan C. Did the Bureau prepare an alternate Senate Plan C?

A. Yes, we did.

Q. I present a copy of a document dated July 17, 1961 to you and ask you whether that document is the Senate Plan C which you prepared?

A. Yes, it is.

(The document referred to was marked Plaintiff's Exhibit No. 10 for Identification.)

Mr. Campbell: I offer that as Plaintiff's Exhibit No. 10.

By Mr. Campbell:

Q. Did you also prepare and submit under date of August 7 a Summary of Changes to Existing Senate Districts which would be involved in Plan C?

A. Yes, we did. That is the document.

(The document referred to was marked Plaintiff's Exhibit No. 11 for Identification.)

Mr. Campbell: Offer that as Plaintiff's Exhibit 11.

[fol. 346]

By Mr. Campbell:

Q. What were the criteria used by the Bureau of Public Administration in the preparation of Senate Plan C?

A. Senate Plan C was conceived to be the districting plan for the Senate which involved the greatest tolerance for deviation from ideal district size. The general limit we tried to operate with was that of no greater deviation than 5 percent. Therefore, it is the plan which deviates most generally from ideal district size of the three Senate plans.

Q. Now, is it a correct statement to say that within the framework of the population deviation to which you have referred, that the Bureau of Public Administration at-

tempted, in the preparation of all of the plans which they have presented, to apply the other criteria which are mentioned in your Report No. 3?

A. Yes, within the broader population limits.

Q. Within the population limits.

Are you familiar with the report of the Hoover Commission on Redistricting which was actually filed?

A. Yes, sir.

Q. Is the document which I am handing you a copy of that report?

A. Yes, it is.

[fol. 347] Mr. Campbell: Although I believe the Court will take judicial notice of that, I will offer it as Plaintiff's Exhibit No. 12.

(The document referred to was marked Plaintiff's Exhibit No. 12 for Identification.)

By Mr. Campbell:

Q. Did the Report of the Commission on Redistricting or the Hoover Commission, as we have termed it, follow any of the plans of A, B, or C submitted by the Bureau of Public Administration?

A. I would say that not consciously. There may be some districts that appear in the Commission's report that are identical to those which appear in various of our plans but I would say in general they are not based—

Q. Was the population deviation proposed in the Hoover Commission report with respect to the House of Delegates greater than that proposed in either plan, Plan A or Plan B for the House of Delegates?

A. You mean the extreme?

Q. The extremes, yes, sir.

A. I believe they are for the house. I couldn't say for the Senate.

Q. You think they are for the House?

[fol. 348] A. I think they are.

Q. Are you familiar with the redistricting which was actually done by the General Assembly by its enactment at its 1962 session?

A. Yes, sir.

Q. Were the deviations, the population deviations in the 1962 Redistricting Act of the General Assembly greater than those submitted by the Bureau of Public Administration in either its Plan A or Plan B for the House of Delegates?

A. Yes, I would say they were.

Q. Were they also greater with respect to the Senate than either Plans A, B, or C?

A. Yes, they were.

Q. I show you a document entitled, "Index Values of the Right to Vote for Members of the Legislature by Counties, as Percentages of the State-Wide Average, Following Redistricting." I ask you if that document was prepared by the Bureau of Public Administration?

A. Yes, it was prepared by me in accordance with research I was conducting.

Mr. Campbell: I will ask that this be offered and then I will ask the witness some questions about it. This will be offered as Plaintiff's Exhibit No. 13.

[fol. 349] (The document referred to was marked Plaintiff's Exhibit No. 13 for Identification.)

By Mr. Campbell:

Q. You say you prepared this statistical analysis, Dr. Eisenberg?

A. Yes, I did. It is a modification of a similar table which we submitted to the Commission on Redistricting and which will appear in the second volume of the devaluation study.

Q. Your monograph entitled, Devaluation of the Urban and Suburban Vote?

A. That's right. A second volume will contain this table of index figures for counties and this particular table is a modification of that table which will be published. This table itself won't be.

Q. I would like to ask you some questions with respect to this Plaintiff's Exhibit No. 13. It is entitled, "Index Values of the Right to Vote for Members of the State Legis-

lature by Counties." Actually, it includes by cities as well as counties, does it not?

A. It does.

Q. The first column is entitled, 1960 population. Is this to the nearest thousand?

[fol. 350] A. Yes, it is.

Q. Is that based on the same census figures which you used and which you previously testified that you used in Plaintiff's Exhibit 4?

A. Yes, they are. There may be a slight modification for Norfolk and Princess Anne that may not—well, let's put it this way, that may or may not have affected the rounding problem.

Q. Will you explain your answer, sir?

A. The figures in the original table were prepared from the Advance Reports for Virginia. Subsequent to that time we determined slight changes, one of which affected Norfolk City and Princess Anne County and accommodated them in our statistics.

Q. What do you mean, slight changes?

A. Where there was an error by the Census Bureau in the population counts for those two governmental units.

Q. Then did you use the final Census reports in this Plaintiff's Exhibit 13?

A. Yes, I believe so. But now it may not have affected the rounding—see what I mean?

Q. Yes.

A. The figures may be identical.

Q. But you did use, in the preparation of Plaintiff's Exhibit No. 13 the final United States Census population [fol. 351] reports for 1960?

A. I don't know if it is exactly the final one. It was a Census Report subsequent to the publication of the Advance Reports we used previously.

Q. Can you tell me what report that was that you used?

A. No, not offhand. I would have to try and run that down. Someone can probably get it right quickly.

Q. I think we had better get it.

A. I didn't want to confuse you.

Q. While that document is being located, Dr. Eisenberg, I will ask you a few additional questions with respect to

Plaintiff's Exhibit No. 13. It purports to show certain index values for the years 1910, 1930, 1950 and 1960. Do those index values relate to the census figures for 1910, the census figures for 1930, the census figures for 1950, and the census figures for 1960?

A. They do.

Q. Do they refer to the index value of the right to vote as you have determined it for the redistricting done by the General Assembly of Virginia following the publication of those census figures? In other words, in 1912, 1932, 1952, or 1955 and 1962, respectively?

A. Yes, they do. The figures for 1950, I believe, accommodate a slight change—1958, I believe.

[fol. 352] Q. 1955?

A. 1955.

Q. But the 1910 figures relate to the 1910 census and the reapportionment made by the legislature following that census, is that correct?

A. They relate to the redistricting in effect following that census.

Q. Following that census?

A. Yes.

Q. And similarly for 1930?

A. Similarly for 1930.

Q. And similarly for 1950?

A. Similarly for 1950.

Q. I believe you stated that 1950 also includes some redistricting that was done in '55?

A. Yes.

Q. With respect to the 1960 figures, they relate to the 1960 census to which you have referred?

A. Yes.

Q. Are the index values referred to here index values computed following the redistricting, giving effect to the Redistricting Act of 1962?

A. Yes, they do.

Q. Now, referring to these figures for 1960, you give [fol. 353] Accomack, as to the lower house, an index value of the right to vote of 212. Will you explain what that means?

A. Yes. You don't at this point want an explanation of the index value concept?

Q. Yes. I think it would be helpful if you would give an explanation of the index value concept that is used in this Plaintiff's Exhibit 13.

A. These index values are computed by dividing the ideal district size on a state-wide basis for the House of Delegates by the population per representative of a district.

In the case of this figure for Accomack County—

Q. Now, wait a minute; let me interrupt you just a moment. The population of Virginia was over 3,900,000, was it not, in 1960?

A. Yes, it was.

Q. Less than four million?

A. Yes.

Q. That would mean, is it a correct statement that you are assuming that the ideal population size would be one for House of Delegates, would be one hundredth of that? In other words, 39,000-odd?

A. Yes, I think it is 39,699.

Q. That is the basis on which you would start for the House of Delegates?

[fol. 354] A. Yes.

Q. Now, will you proceed from that?

A. We would be dividing the population of the State by the number of delegates which would produce this figure of 39,669 which we would call the state-wide average population per district. To arrive at the index you would then divide 39,669 by the population of a district and this would yield the index value for that district.

Q. Did Accomack have a sole delegate?

A. Accomack is a legislative district by itself. In addition, it is part of a, what is described as a "floater" district with Northampton County. As a result, has an index value for the district that it has to itself and an index value that it has for the district which it shares with Northampton. According to our study, Accomack County was credited with the share of the floater representative that its population bore to the population of the entire district.

Q. And then the index value for that "floater" district added to the index value of its sole delegate?

A. The ultimate index value for Accomack is determined in either of two ways, one of which is that mathematically its index value becomes the sum of the index values of the two districts in which it finds itself or, alternatively, if you divide the population of the county by the number of [fol. 355] representatives that the county has, you can determine for that county what its population per representative is; then dividing that population per representative for Accomack County into the ideal or into the state-wide average or 39,669, you would arrive at the same index value or 2.12.

Q. Does this mean, then, that for the lower House Accomack has, in your opinion, sir, 212 percent of its ideal population representation in the lower House under the 1962 redistricting for the House?

A. I think I would express it as Accomack having, Accomack County having, 212 percent of the vote value that its citizens would be entitled to under an ideal scheme of population equality between districts.

Q. Now, if you let me point out now, sir, on the second page of Plaintiff's Exhibit No. 13, Fairfax County. It had a population in 1960 of the nearest thousand of 275,000, did it not?

A. Yes, sir.

Q. It had an index value in the lower House of 42; is that correct?

A. Yes, sir.

Q. How is that index value arrived at in Fairfax, now?

A. This was computed by dividing the population of Fairfax County by the number of delegates.

[fol. 356] Q. Fairfax County has 275,000 population?

A. That's right.

Q. According to this statistical analysis?

A. Yes.

Q. It has three delegates, does it not?

A. Yes, sir; I believe so.

Q. Will you explain briefly how that computation is arrived at now for Fairfax County? You want to do it mathematically?

A. Well, now, computing this for the House, let me see if I can simplify things. Dividing the population of Fairfax County, some 275,000, by its three delegates produces a population per representative in Fairfax County of 95,064 persons. Then dividing the state-wide average population per representative of 39,669 by 95,064 produces an index for Fairfax County in the House of Delegates of .42 or 42 percent.

Q. Now, then, if the index value of Accomack is 2.12 and the index value of Fairfax is .42, what would you say was the maximum deviation from the ideal, assuming those to be the extremes under the 1962 Redistricting Act; what would you say was the extreme deviation from the ideal on a population basis under the 1962 Act?

Let me go further, sir, and in explanation of my question. In your Report No. 3 to the Commission on Redistricting [fol. 357] you suggested that the maximum deviation, in your opinion, should be within 25 percent.

A. Yes.

Q. Were those deviations within 25 percent?

A. No, they are not.

Mr. Mays: Don't you mean, to get it clear, 25 percent up and 25 percent down? In other words, 50?

Mr. Campbell: I do mean 25 percent up and 25 percent down. That is the reason I would like this witness to explain what—

The Witness: We could put it this way in terms of the index values that we have employed, namely that Fairfax is .42 in comparison to Accomack 2.12—would mean in the terms of our study that a voter in Accomack had almost five times the vote value of a citizen of Fairfax, comparing the two in that way.

By Mr. Campbell:

Q. Can you, assuming those to be the maximum deviations under the 1962 Redistricting Act, can you apply the same formula to which you have referred in your Plans A and Plan B—that is, you stated in Plan A for the House of Delegates that you were getting a range between 1.17 as a maximum and .83 as a minimum. Is it correct to say that

applying the same criteria that the variation is between 2.12 [fol. 358] as a maximum and .42 as a minimum?

A. Yes.

Q. In the 1962 Redistricting Act?

A. Yes, that can be said.

Q. Is it also correct that under that formula, that if you subtract .42 from 2.12 you get 1.70; that the variation is .85—85 percent instead of 25 percent?

A. Off the record.

(Discussion off the record.)

Q. Let me withdraw the question and restate it:

In your Plan A and Plan B you were attempting to provide that, were you not, that no district have more than 25 percent above its representation on a fair population basis?

A. That's right.

Q. No district have more than 25 percent less than its fair representation?

A. Yes.

Q. Or, as Mr. Mays said, a maximum variation of 50 percent—that is, 25 percent up and 25 percent down; is that correct?

A. Yes.

Q. Or if you were applying the 15 percent formula it would be a maximum variation of 30 percent—that is, 15 up and 15 down, is that correct?

[fol. 359] A. Yes; it is within, again, the terms of this approach.

Q. Now, applying that approach to the actual redistricting with respect to Fairfax County on the one hand and Accomack on the other, I would ask you to tell me what the variation up and down is.

A. There would be a difference of 1.70 between the two districts, the two counties.

Q. Is it correct to state that under the 1962 Redistricting Act Fairfax County has 59 percent less than the ideal average? That is, the difference between 42 percent and 100 percent or 52 points less than the ideal average? How would you express it?

A. I would say that Fairfax County receives 42 percent of the representation to which it would be entitled under terms of population equality.

Q. And Accomack receives what percent of the representation to which it would be entitled under population equality?

A. It receives 212 percent.

Q. And the vote value of a citizen of Accomack in the selection of a Member of the House of Delegates bears what ratio to the vote value of a citizen of Fairfax County?

A. That is pretty simple. In Accomack, a citizen would have a vote value worth almost five times that of a Fairfax County voter.

Q. Under the 1962 Redistricting Act?

[fol. 360] A. Under the 1962 Redistricting Act.

Q. Now, in Arlington, the vote value in Arlington under this index, Plaintiff's No. 13, is what for a Member of the House of Delegates following the 1962 Redistricting Act?

A. 73—.73.

Q. Would the vote value, then, of a citizen of Accomack under this table bear what ratio to the vote value of a citizen of Arlington following the 1962 Redistricting Act?

A. The Accomack citizen's vote value would be almost three times that of the Arlington Citizen.

Q. Is the vote value of a citizen of the City of Falls Church under the 1962 Redistricting Act the same as the vote value of a citizen of Fairfax for the House of Delegates under the 1962 Redistricting Act?

A. Yes, it is.

Q. Applying Plaintiff's Exhibit 13 to the upper House for a moment, or the Senate, Mr. Eisenberg, the vote value of a citizen of Arlington, following the 1962 redistricting insofar as the Senate is concerned, is what?

A. 61.

Q. 61 percent?

A. That's right.

Q. That is based on the assumption that Arlington has [fol. 361] what population under the 1960 census?

A. 163,401.

Q. The ideal population for a senator based upon population division is what?

A. 99,174.

Q. The vote value of a citizen of Louisa County for the upper House or the Senate, following the 1962 Redistricting Act was what?

A. 159.

Q. For the County of Loudoun.

A. 156 percent.

Q. Applying the same criteria, then, which you applied to the House of Delegates, the value of the right to vote of a citizen of Loudoun or Louisa is how much greater than that of a citizen of Arlington for the Senate?

A. It is over, the value is almost twice as great for Louisa citizen in comparison to an Arlington citizen.

Q. You say almost twice as great?

A. I am sorry; a little over twice as great.

Q. Almost two and a half times as great, isn't it?

A. Almost two and a half.

Q. In fact, it is a little more than two and a half?

A. I can't say without my calculations.

Q. And Lunenburg is 161, the value of the right to vote [fol. 362] for the Senate is 161, isn't it?

A. That's right.

Q. Similarly for the County of Brunswick, is it not?

A. Yes, sir.

Q. Is it true that the value of the right to vote for Members of the Senate in the Counties of Lunenburg and Brunswick is more than two and a half times that of Arlington?

A. Yes, sir; around two and a half times more.

Q. And the value of the right to vote for the upper House in Fairfax County is 70, is it not?

A. Yes, sir.

Q. For Falls Church also 70?

A. Yes, sir.

Q. Then is it true that the value of the right to vote for Members of the Senate in Lunenburg and in Brunswick and in Louisa and in Loudoun is also more than twice that of the value of the right to vote in Fairfax and Falls Church for Members of the Senate?

A. Yes, sir.

Q. Mr. Eisenberg, did you also prepare a compilation entitled, "Average Values of the Right to Vote for Repre-

sensation in the Virginia General Assembly Before and After 1962 Redistricting Act" Based on Population Categories, general population categories?

[fol. 363] A. Yes, sir; I did.

Q. Is the paper which I hand you the one to which you refer?

A. Yes, sir.

(The document referred to was marked Plaintiff's Exhibit No. 14 for Identification.)

Mr. Campbell: I offer that in evidence as Plaintiff's Exhibit No. 14.

By Mr. Campbell:

Q. This Plaintiff's Exhibit No. 14 has in its last column—strike that.

Q. The last column of Plaintiff's Exhibit No. 14 is entitled, "Average Values of the Vote for Representation in Lower House/Upper House/Legislature."

I will ask you if the values referred to, the average values referred to, are the same—strike that.

I would ask you if the indexes referred to in this column, these columns, for the Lower House, Upper House, and Legislature are computed in the same manner as were used in the computation of Plaintiff's Exhibit 13?

A. Yes, sir; except for the fact that these are cumulative figures.

Q. Dealing with, for a moment, or referring in Plaintiff's Exhibit 14 to the average value of the right to vote, as it [fol. 364] appears under that exhibit, following the reapportionment of 1962, I note that the categories of the state having population of under 25,000 had in the lower house an average vote value of 118.

A. Yes, sir.

Q. Will you explain what is meant by that?

A. Under the same concept of average value of the right to vote or index values of the right to vote, it means that all counties and cities in population category of under 25,000 had 118 percent of the representation in the House

of Delegates than they would have had under a scheme of ideal population equality between districts.

Q. Are you referring now to individual counties of less than 25,000 population added together, and individual cities of less than 25,000 population added together?

A. Yes. The populations of all counties and cities in the State under 25,000.

Q. Yes.

A. Were added, giving us a population figure; similarly total representation that counties and cities in this population category had were totaled and then dividing the cumulative population total by the cumulative representative total produced a population per representative for all units within that category. Then this population per representative of that category, divided into the ideal state-wide [fol. 365] average population per representative produces this cumulative average value.

Q. The county—

A. Similarly for the other categories, the other two.

Q. Now, also in Plaintiff's Exhibit No. 14 I note that categories having populations between 100,000 and 499,000 had for the lower House an average representation value of 79 percent. Is that calculated on the same basis?

A. Yes, it is.

Q. The County of Arlington and the County of Fairfax would come in that category, would they not?

A. Yes, sir; this concept was developed as part of the Devaluation Study which was an attempt to produce usable categories on a national basis for all fifty states.

Q. The last column, entitled "Legislature"—is that simply an average between the upper and the lower House?

A. Yes, it is; it is an average between the two Houses.

Q. Arithmetical mean?

A. Arithmetical average. It is a strict and simple averaging process based upon the assumption that each legislative House in a bicameral legislature has equal weight in the legislative process.

Q. I now show you a paper entitled, "Ratio Largest to Smallest Population Per Delegate, Virginia General Assembly," and ask you if you prepared that.

A. Yes, sir; it was prepared under my supervision.

Mr. Campbell: I offer that as Plaintiff's Exhibit No. 15.

(The document referred to was marked Plaintiff's Exhibit No. 15 for Identification.)

By Mr. Campbell:

Q. Calling your attention to Plaintiff's Exhibit 15, I notice that the years to which you refer there are 1915, 1935, 1955 and 1964.

A. Yes, sir.

Q. Calling specifically your attention to 1964, I see a star, asterisk, which makes reference to Acts of 1962.

A. Yes, sir.

Q. Are you referring to the Reapportionment or Redistricting Act of the General Assembly of 1962?

A. Yes, sir.

Q. Now, when you refer to 1964, are you referring to 1964 population figures or 1960 population figures?

A. 1960 population figures. The purpose of 1964 is the year in which that will be effective for a General Assembly.

Q. For a General Assembly elected to serve in 1964?

A. Yes, sir.

[fol. 367] Q. I show you a paper similar in character relating to the Senate. Was that also prepared under your supervision?

A. Yes, sir.

Q. Were the computations prepared on the same basis as they were for the House of Delegates? Plaintiff's Exhibit 15.

A. That's right; yes, sir.

Mr. Campbell: I offer that in evidence as Plaintiff's Exhibit No. 16.

(The document referred to was marked Plaintiff's Exhibit No. 16.)

By Mr. Campbell:

Q. I have asked, sir, in connection with what census figures, what census figures you used in the preparation of the exhibits which have been referred to as Plaintiff's Exhibits 13, 14, 15 and 16, and you stated that you would send out for the document which you used. Have you got that document?

A. Yes, sir. You requested the latest figures we used for Virginia for—

Q. I requested the figures which were used by you in the preparation of Plaintiff's Exhibit 13.

A. Yes, sir.

Q. Were the same figures which were used by you in the preparation of Plaintiff's Exhibit 13, same population [fol. 368] figures, used in the preparation of Plaintiff's Exhibits 14, 15, 16.

A. They were used for 14 and a portion of 15 and 16.

Q. Insofar as applicable?

A. That's right.

Q. Can you indicate to me now the document giving the population figures which were used in the preparation of Plaintiff's Exhibits 13, 14, 15, 16?

A. The document is entitled, United States Census of Population, 1960; United States Summary, Number of Inhabitants, published by the United States Department of Commerce, Bureau of the Census, and designated as Final Report, PC (1-1A).

Q. Does it have a date?

A. I don't see one.

Q. I call your attention to the Roman numeral page iii of the document after the word, "Preface and Acknowledgment." Is there a date appearing on it?

A. Yes, and the date appearing there is May, 1961.

Mr. Campbell: We will offer this as Plaintiff's Exhibit No. 17. I will get copies of this and send you.

(The document referred to was marked Plaintiff's Exhibit No. 17 for Identification.)

By Mr. Campbell:

Q. Mr. Eisenberg, is the statistical data which has been [fol. 369] identified by you and offered in evidence accurately computed, to the best of your knowledge?

A. Yes, sir; it is accurate to the best of my knowledge.

Mr. Campbell: I have no further questions.

Mr. Mays: No questions.

Cross examination.

By Mr. Howell:

Q. Dr. Eisenberg, I show you a compilation the caption page of which is, 1962 General Assembly Redistricting in which certain computations are made by districts and ask you if that was done under your direction and what the purpose of that document is.

A. This document was prepared under my supervision. Its purpose was to bring up-to-date similar statistics that we had compiled in regard to the apportionment of both Houses of the Virginia General Assembly prior to the 1962 General Assembly Redistricting.

Q. The population statistics, are these the ones that are embodied in Plaintiff's Exhibit 17, being the census information that you last referred to?

A. I believe so.

Q. I just want to ask you, you are satisfied that it is the intermediate information that is in this exhibit, is that right, Dr. Eisenberg?

[fol. 370] A. I am not sure I understand you.

Q. There has been some off-the-record discussion as to the source of the census statistics that are contained in the document which I am offering in evidence as Intervening Petitioner's Exhibit 1. I want to ask you if you wish to correct your previous answer at this time with reference to whether the census statistics are those contained in what we have termed the Final Census Report, Plaintiff's Exhibit 17, or whether it is in the Advance Reports, which is Plaintiff's Exhibit 4.

Just one moment. That reference to that Plaintiff's Exhibit 4—

A. No, it appears to me that it is the information that appears in the Final Census Report, according to the footnote.

Q. So, to the best of your knowledge, at the present time, Intervening Petitioner's Exhibit 1, we have the census statistics appearing in the Final Report which has heretofore been introduced as Plaintiff's Exhibit 17?

A. Yes, sir.

(The document referred to was marked Intervening Petitioner's Exhibit No. 1.)

By Mr. Howell:

Q. Dr. Eisenberg, in Plaintiff's Exhibit 3, which is Plan A for Redistricting of the House of Delegates, would you [fol. 371] state how many delegates were recommended for the City of Norfolk?

A. House Plan A for the House of Delegates submitted to the Commission on Redistricting recommended seven delegates for the City of Norfolk.

Q. In House Plan B, how many delegates were recommended for the City of Norfolk?

A. House Plan B, seven delegates were recommended for the City of Norfolk.

Q. In the so-called Hoover Commission Report, how many delegates were recommended for the City of Norfolk?

A. The Commission on Redistricting Report recommended seven delegates for the City of Norfolk.

Q. Now, referring to those same, referring to Plaintiff's Exhibit 7, Plan A for Redistricting the Senate, How many Senators were recommended to be allocated to the City of Norfolk?

A. Plan A recommended three Senators for the City of Norfolk.

Q. Senate Plan B which is Plaintiff's Exhibit 8, how many Senators were recommended for the City of Norfolk?

A. Senate Plan B recommends three Senators for the City of Norfolk.

Q. Referring to the Hoover Commission, or the Governor's Committee on Redistricting, how many Senators were [fol. 372] recommended for the City of Norfolk?

A. The Committee on Redistricting Report recommended three Senators for the City of Norfolk.

Q. Dr. Eisenberg, I would like to have you refer to the necessary documents and give me the comparison between the index value of the right to vote for the Members of

the House of Delegates of the Virginia General Assembly for the City of Norfolk as related to Accomack County following the 1960 census.

A. The index value for Norfolk under the 1962 Redistricting Act in the House of Delegates was 78 percent compared to Accomack's 212 percent.

Q. Following that same exercise in mathematics that Mr. Campbell put you through, would you tell me so that we will have it for the record, the ratio, or the difference in the value of a citizen of the City of Norfolk to vote for a representative of the House of Delegates as compared to Accomack, the number of times greater one is to the other.

A. The citizen of Accomack's vote value would be over two and a half times as great as the Norfolk citizen's.

Q. I wish you would give me the index value of the right to vote of a citizen of the City of Chesapeake, Virginia, which is the District of South Norfolk and Norfolk County, as contained in your statistics.

[fol. 373] Mr. Campbell: Which?

The Witness: Chesapeake City. That is a new city. It will appear under Norfolk County.

Is this for the House of Delegates?

By Mr. Howell:

Q. For the House of Delegates.

A. The House of Delegates would be 108.

Q. 108 percent?

A. For Norfolk County.

Q. For Norfolk County and South Norfolk combined?

A. South combined, yes—South Norfolk, yes.

Q. Is that correct, 108 for Norfolk County and South Norfolk combined?

A. Yes, sir.

Q. I would like to take that same City of Chesapeake and have you give me the index value of the right to vote for the State Senate?

A. The State Senate, the index value for what is now Chesapeake would be 135 percent.

Q. What is the index value of the right to vote of a citizen of Norfolk for the State Senate?

A. Norfolk City?

Q. Norfolk City.

A. 65 percent.

[fol. 374] Q. Does that appear to be that the citizen of the City of Chesapeake's vote was slightly in excess of two times that of the citizen of Norfolk?

A. In the State Senate?

Q. In the State Senate.

A. Yes.

Q. What is the degree of deviation with respect to the State Senate between the City of Norfolk and the now city of Chesapeake?

A. The citizen of what is now Chesapeake would have for the State Senate the vote value that would be 135 percent of what it should be under conditions of population equality between districts whereas a citizen of Norfolk would have a vote value of 65 percent.

Q. Is it practicable to relate these deviations so as to compare the actual deviation between the City of Chesapeake and the City of Norfolk with the maximum allowable deviation consistent with fair apportionment?

A. No. The deviations in both directions are greater than they should be under conditions of no more than 25 percent deviation.

Q. They are greater than they should be but could you tell me what the percentage of deviation is?

A. That is back where we were before.

[fol. 375] Q. If that is not practicable without a machine—

A. I would say now I don't think it is practicable.

Q. There is no question but what it exceeds the maximum tolerances consistent with fair apportionment?

A. With what I would consider to be fair apportionment.

Mr. Howell: That's all.

Mr. Mays: That prompts this question: what you consider to be a fair apportionment. What you are saying is that it exceeds the 25 percent, 25 percent tolerance.

The Witness: That's right.

Mr. Mays: Thank you. I have no further questions.  
Mr. Campbell: Thank you.

RALPH EISENBERG  
Ralph Eisenberg

(Thereupon, at 3:55 o'clock, p.m., the taking of the deposition was concluded.)

[fol. 376]

STATE OF VIRGINIA  
COUNTY OF ALBEMARLE

I, Gilbert Halasz, a notary public duly commissioned and qualified in and for the State of Virginia At-Large, do hereby certify that, pursuant to notice, there came before me on the twenty-eighth day of August, 1962, at 2:00 o'clock, p.m., in the Conference Room, Minor Hall, University of Virginia, Charlottesville, Virginia, the following named person, to-wit, Ralph Eisenberg, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to writing by me; that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 6th day of September, 1962.

GILBERT HALASZ  
Notary Public in and for the  
State of Virginia At-Large

(Seal)

My commission expires February 3, 1966.

[fol. 377]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 1

Commonwealth of Virginia

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ANNUAL REPORT  
OF  
VIRGINIA ALCOHOLIC BEVERAGE  
CONTROL BOARD

Fiscal Year Ended June 30, 1961

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[fol. 378]

TABLE VIII—DISTRIBUTION OF A. B. C. PROFITS  
TO COUNTIES, CITIES AND TOWNS

Place

GRAND TOTAL

TOTAL COUNTIES

TOTAL CITIES

TOTAL TOWNS

Accomack

Accomac

Belle Haven

Bloxxom

Chincoteague

Hallwood

Keller

Melfa

Onancock

Onley

## Place

Painter  
 Parksley  
 Saxis  
 Tangier  
 Wachapreague  
 Total

Albemarle  
 Scottsville  
 Total

Alleghany  
 Iron Gate  
 Total

Amelia  
 Total

Amherst  
 Amherst  
 Total

Appomattox  
 Appomattox  
 Pamplin  
 Total

Arlington  
 Total

Augusta  
 Craigsville  
 Total

Bath  
 Total

Bedford  
 Bedford  
 Total

Bland  
 Total

## Place

[fol. 379]

Botetourt

Buchanan

Fincastle

Troutville

Total

Brunswick

Alberta

Brodnax

Lawrenceville

Total

Buchanan

Grundy

Total

Buckingham

Buckingham

Dillwyn

Total

Campbell

Altavista

Brookneal

Total

Caroline

Bowling Green

Port Royal

Total

Carroll

Hillsville

Total

Charles City

Total

Charlotte

Charlotte Court House

Drakes Branch

Keysville

Phenix

Total

## Place

Chesterfield  
Total

Clarke  
Berryville  
Boyce  
Total

Craig  
New Castle  
Total

Culpeper  
Culpeper  
Total

[fol. 380]  
Cumberland  
Total

Dickenson  
Clintwood  
Haysi  
Total

Dinwiddie  
McKenny  
Total

Essex  
Tappahannock  
Total

Fairfax  
Clifton Station  
Fairfax  
Herndon  
Vienna  
Total

Fauquier  
Remington  
The Plains  
Warrenton  
Total

## Place

Floyd  
 Floyd  
 Total

Fluvanna  
 Columbia  
 Total

Franklin  
 Boones Mill  
 Rocky Mount  
 Total

Frederick  
 Middletown  
 Stephens City  
 Total

Giles  
 Glen Lyn  
 Narrows  
 Pearisburg  
 Pembroke  
 Rich Creek  
 Total

Gloucester  
 Total

Goochland  
 Total

[fol. 381]  
 Grayson  
 Fries  
 Independence  
 Troutdale  
 Total

Greene  
 Stanardsville  
 Total

Greensville  
 Emporia  
 Total

## Place

## Halifax

Clover

Halifax

Scottsburg

Virgilina

Total

## Hanover

Ashland

Total

## Henrico

Total

## Henry

Ridgeway

Total

## Highland

Monterey

Total

## Isle of Wight

Smithfield

Windsor

Total

## James City

Total

## King George

Total

## King and Queen

Total

## King William

West Point

Total

## Lancaster

Irvington

Kilmarnock

Whitestone

Total

## Place

[fol. 382]

Lee

Jonesville  
 Pennington Gap  
 St. Charles  
 Total

Loudoun

Hamilton  
 Hillsboro  
 Leesburg  
 Lovettsville  
 Middleburg  
 Purcellville  
 Round Hill  
 Total

Louisa

Louisa  
 Mineral  
 Total

Lunenburg

Kenbridge  
 Victoria  
 Total

Madison

Madison  
 Total

Mathews

Total

Mecklenburg

Boydton  
 Chase City  
 Clarksville  
 LaCrosse  
 South Hill  
 Total

Middlesex

Urbanna  
 Total

## Place

Montgomery  
 Blacksburg  
 Cambria  
 Christiansburg  
 Total

Nansemond  
 Holland  
 Whaleyville  
 Total

Nelson  
 Total

New Kent  
 Total

[fol. 383]  
 Norfolk  
 Total

Northampton  
 Cape Charles  
 Cheriton  
 Eastville  
 Exmore  
 Nassawadox  
 Total

Northumberland  
 Total

Nottoway  
 Blackstone  
 Burkeville  
 Crewe  
 Total

Orange  
 Gordonsville  
 Orange  
 Total

## Place

## Page

Luray  
Shenandoah  
Stanley  
Total

Patrick  
Stuart  
Total

Pittsylvania  
Chatham  
Gretna  
Total

Powhatan  
Total

Prince Edward  
Farmville  
Total

Prince George  
Total

Princess Anne  
Total

Prince William  
Haymarket  
Manassas  
Manassas Park  
Occoquan  
Quantico  
Total

[fol, 384]

Pulaski  
Draper  
Dublin  
Pulaski  
Total

Rappahannock  
Washington  
Total

246

Place

Richmond

Warsaw

Total

Roanoke

Salem

Vinton

Total

Rockbridge

Glasgow

Goshen

Lexington

Total

Rockingham

Bridgewater

Broadway

Dayton

Elkton

Grottoes

Mt. Crawford

Timberville

Total

Russell

Cleveland

Honaker

Lebanon

Total

Scott

Clinchport

Duffield

Dungannon

Gate City

Nickelsville

Weber City

Total

Shenandoah

Edinburg

Mt. Jackson

## Place

New Market  
 Strasburg  
 Tom's Brook  
 Woodstock  
 Total

## Smyth

Chilhowie  
 Marion  
 • Saltville  
 Total

[fol. 385]

## Southampton

Boykins  
 Branchville  
 Capron  
 Courtland  
 Franklin  
 Ivor  
 Newsome

Total

## Spotsylvania

Total

## Stafford

Total

## Surry

Claremont  
 Dendron  
 Surry

Total

## Sussex

Jarratt  
 Stony Creek  
 Wakefield  
 Waverly

Total

## Tazewell

Bluefield  
 Cedar Bluff

## Place

North Tazewell  
 Pocahontas  
 Richlands  
 Tazewell  
 Total

## Warren

Front Royal  
 Total

## Washington

Abingdon  
 Damascus  
 Glade Springs  
 Total

## Westmoreland

Colonial Beach  
 Montross  
 Total

## Wise

Appalachia  
 Big Stone Gap  
 Coeburn  
 • Pound  
 St. Paul  
 Wise  
 Total

[fol. 386]

## Wythe

Rural Retreat  
 Wytheville  
 Total

## York

Poquoson  
 Yorktown  
 Total

Total Counties

Total Towns

## Place

## CITIES

Alexandria  
 Bristol  
 Buena Vista  
 Charlottesville  
 Clifton Forge  
 Colonial Heights  
 Covington  
 Danville  
 Fairfax  
 Falls Church  
 Fredericksburg  
 Galax  
 Hampton  
 Harrisonburg  
 Hopewell  
 Lynchburg  
 Martinsville  
 Newport News  
 Norfolk  
 Norton  
 Petersburg  
 Portsmouth  
 Radford  
 Richmond  
 Roanoke  
 South Boston  
 South Norfolk  
 Staunton  
 Suffolk  
 Virginia Beach  
 Waynesboro  
 Williamsburg  
 Winchester

Total Cities

\*Towns located in two counties are listed in that county in which the majority of their population resides.

†Fairfax became a city under court order of May 10, 1961.

NOTE: A. B. C. Profits distributed Aug. 25, 1961.

Wine Tax distributed Oct. 10, 1961.

[fol. 387]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 2

U. S. DEPARTMENT OF COMMERCE

Bureau of the Census

Washington 25

September 26, 1962

I HEREBY CERTIFY, That according to the official count of the returns of the EIGHTEENTH CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the number of males 14 years old and over in the labor force reported as in the Armed Forces, as of April 1, 1960, for the County of Arlington, State of Virginia, was ten thousand six hundred and twenty-eight (10,628).

/s/ RICHARD M. SCAMMON

Richard M. Scammon  
Director  
Bureau of the Census

[Stamp—Received Oct. 2, 1962, Clerk,  
U. S. Dist. Court, Richmond, Va.]

[Seal]

[fol. 388]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

## DEFENDANTS' EXHIBIT 3

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

28 September 1962

## ELECTORAL COLLEGE DATA

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 28th day of September, 1962.

/s/ CLARICE R. SNEAD

Clarice R. Snead  
Notary Public  
Albemarle County, Virginia

My commission expires 6 February 1966.

[Seal]

[Stamp—Received Oct. 2, 1962, Clerk,  
U. S. Dist. Court, Richmond, Va.]

[fol. 389]

## Electoral College Data

Name of State	Population— 1960 Census	Number of Electors	Population per Elector
Alabama	3,266,740	10	326,674
Alaska	266,167	3	88,722
Arizona	1,302,161	5	260,432
Arkansas	1,786,272	6	297,712
California	15,717,204	40	392,930
Colorado	1,753,947	6	292,325
Connecticut	2,535,234	8	316,904
Delaware	446,292	3	148,764
Florida	4,951,560	14	353,683
Georgia	3,943,116	12	328,593
Hawaii	632,772	4	158,193
Idaho	667,191	4	166,798
Illinois	10,081,158	26	387,737
Indiana	4,662,498	13	358,654
Iowa	2,757,537	9	306,393
Kansas	2,178,611	7	311,230
Kentucky	3,038,156	9	337,573
Louisiana	3,257,022	10	325,702
Maine	969,265	4	242,316
Maryland	3,100,689	10	310,069
Massachusetts	5,148,578	14	367,756
Michigan	7,823,194	21	372,533
Minnesota	3,413,864	10	341,386
Mississippi	2,178,141	7	311,163
Missouri	4,319,813	12	359,984
Montana	674,767	4	168,692
Nebraska	1,411,330	5	282,266
Nevada	285,278	3	95,093
New Hampshire	606,921	4	151,730
New Jersey	6,066,782	17	356,870
New Mexico	951,023	4	237,756
New York	16,782,304	43	390,286
North Carolina	4,556,155	13	350,473
North Dakota	632,446	4	158,112
Ohio	9,706,397	26	373,323
Oklahoma	2,328,284	8	291,036

Name of State	Population— 1960 Census	Number of Electors	Population per Elector
Oregon	1,768,687	6	294,781
Pennsylvania	11,319,366	29	390,323
Rhode Island	859,488	4	214,872
South Carolina	2,382,594	8	297,824
South Dakota	680,514	4	170,129
Tennessee	3,567,089	11	324,281
Texas	9,579,677	25	383,187
Utah	890,627	4	222,657
Vermont	389,881	3	129,960
Virginia	3,966,949	12	330,579
Washington	2,853,214	9	317,024
West Virginia	1,860,421	7	265,774
Wisconsin	3,951,777	12	329,315
Wyoming	330,066	3	110,022

[fol. 390] *Sources*

U. S. Bureau of the Census, PC(1)-1A *United States Census of Population, 1960, United States Summary, Number of Inhabitants*, Table 13, p. 1-21. Based upon reapportionment after 1960 Census.

*Ibid.*, Table 24, pp. 1-51-1-63.

[fol. 391]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 4

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

27 September 1962

NEW YORK STATE LEGISLATIVE  
APPORTIONMENT DATA

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 27th day of September, 1962.

CLARICE R. SNEAD  
Notary Public  
Albemarle County, Virginia

My commission expires 6 Feb. 1966

[Seal]

[Stamp—Received Oct. 2, 1962, Clerk,  
U. S. Dist. Court, Richmond, Va.]

# NEW YORK STATE SENATE

58 Senators      Total State Population - 16,782,304

Average Population per Senator - 289,350

<u>No. of Senators</u>	<u>District</u>	<u>County</u>	<u>Population</u>	<u>Population per Senator</u>
1	# 1	Suffolk	666,784	666,784
3	# 2,3,4	* Nassau	1,300,171	433,390
5	# 5,6,7, 8,9	* Queens	1,809,578	361,915
9	# 10,11,12, 13,14,15, 16,17,18	* Kings	2,627,319	291,924
1	# 19	Richmond	221,991	221,991
6	# 20,21,22, 23,24,25	* New York	1,698,281	283,046
4	# 26,27,28, 29	* Bronx	1,424,815	356,203
3	# 30,31,32	* Westchester	808,891	269,630
1	# 33	Orange	183,734	
		Rockland	<u>136,803</u>	320,537
1	# 34	Delaware	43,540	
		Greene	31,372	
		Ulster	118,804	
		Sullivan	<u>45,272</u>	238,988
1	# 35	Columbia	47,322	
		Dutchess	176,008	
		Putnam	<u>31,722</u>	255,052
1	# 36	Albany	272,926	272,926
1	# 37	Washington	48,476	
		Rensselaer	<u>142,585</u>	191,061
1	# 38	Schoharie	22,616	
		Schenectady	<u>152,896</u>	175,512
1	# 39	Essex	35,300	
		Warren	44,002	
		Saratoga	<u>89,096</u>	168,398

[Vol. 392]

No. of Senators	District	County	Population	Population per Senator
1	# 40	St. Lawrence Franklin Clinton	111,239 44,742 <u>12,722</u>	228,703
1	# 41	Hamilton Herkimer Fulton Montgomery	4,267 66,370 51,304 <u>57,240</u>	179,181
1	# 42	Oneida	264,401	264,401
1	# 43	Lewis Jefferson Oswego	23,249 87,835 <u>86,118</u>	197,202
2	# 44,45	* Oneida	423,028	211,514
1	# 46	Madison Cortland Chenango Otsego	54,635 41,113 43,243 <u>51,942</u>	190,933
1	# 47	Broome	212,661	212,661
1	# 48	Cayuga Tompkins Tioga	73,942 66,164 <u>37,802</u>	177,908
1	# 49	Steuben Chemung	97,691 <u>98,706</u>	196,397
1	# 50	Wayne Ontario Seneca Yates Schuyler	67,989 68,070 31,984 18,614 <u>15,044</u>	201,701
2	# 51,52	* Monroe	586,387	293,193
1	# 53	Orleans Genesee Wyoming Livingston Allegany	34,159 53,994 34,793 44,053 <u>43,978</u>	210,977
1	# 54	Niagara	242,269	242,269
3	# 55,56,57	* Erie	1,064,688	354,896

[Vol. 393]



# NEW YORK

150 Assemblymen - 58 Senators

Total State Population - 16,782,304

Average Population per Senator - 289,350

Average Population per Assemblyman - 111,882

<u>No. in Assembly</u>	<u>District (County)</u>	<u>Population by District</u>	<u>Population per Representative</u>
2	Albany	272,926	136,463
1	Allegany	43,978	43,978
12	Bronx	1,424,815	118,734
2	Broome	212,661	106,330
1	Cattaraugus	80,187	80,187
1	Cayuga	73,942	73,942
1	Chautauqua	145,377	145,377
1	Chemung	98,706	98,706
1	Chenango	43,243	43,243
1	Clinton	72,722	72,722
1	Columbia	47,322	47,322
1	Cortland	41,113	41,113
1	Delaware	43,540	43,540
1	Dutchess	176,008	176,008
8	Erie	1,064,688	133,086
1	Essex	35,300	35,300
1	Franklin	44,742	44,742
* 1	Fulton	51,304	51,304
1	Genesee	53,994	53,994

[fol. 395]

<u>No. in Assembly</u>	<u>District (County)</u>	<u>Population by District</u>	<u>Population per Representative</u>
1	Greene	31,372	31,372
* 1	Hamilton	4,267	(Floater)
1	Herkimer	66,370	66,370
1	Jefferson	87,835	87,835
22	Kings	2,627,319	119,423
1	Lewis	23,249	23,249
1	Livingston	44,053	44,053
1	Madison	54,635	54,635
4	Monroe	586,387	146,596
1	Montgomery	57,240	57,240
6	Nassau	1,300,171	216,695
16	New York	1,698,281	106,142
2	Niagara	242,269	121,134
2	Oneida	264,401	132,200
3	Onandaga	423,028	141,009
1	Ontario	68,070	68,070
2	Orange	183,734	91,867
1	Orleans	34,159	34,159
1	Oswego	86,118	86,118
1	Otsego	51,942	51,942
1	Putnam	31,722	31,722
13	Queens	1,809,578	139,198
1	Rensselaer	142,585	142,585
2	Richmond	221,991	110,995
1	Rockland	136,803	136,803

[col. 396]

<u>No. in Assembly</u>	<u>District (County)</u>	<u>Population by District</u>	<u>Population per Representative</u>
1	St. Lawrence	111,239	111,239
1	Saratoga	89,096	89,096
1	Schenectady	152,896	152,896
1	Schoharie	22,616	22,616
1	Schuyler	15,044	15,044
1	Seneca	31,984	31,984
1	Steuben	97,691	97,691
3	Suffolk	666,784	222,261
1	Sullivan	45,272	45,272
1	Tioga	37,802	37,802
1	Tompkins	66,164	66,164
1	Ulster	118,804	118,804
1	Warren	44,002	44,002
1	Washington	48,476	48,476
1	Wayne	67,989	67,989
6	Westchester	808,891	134,815
1	Wyoming	34,793	34,793
1	Yates	18,614	18,614

[fol. 397]

\* Apparently Fulton shares a floater seat with Hamilton County.

**[fol. 398] Sources****Apportionment:**

New York State Law, Sections 120-125.

L. 1953, 2d ex. sess., c. 893.

L. 1954, ex. sess., c. 2.

**Population:**

U. S. Bureau of the Census, PC(1)-1A *United States Census of Population, 1960, United States Summary, Number of Inhabitants, Table 24 (New York)*, p. 1-58.

*Legislative Manual of the State of New York 1961-62*, pp. 1030-1031.

*W.M.C.A. Inc. v. Simon*, D.C.S.D.N.Y., 1962, Appendices C, D, and E.

**Note:**

Later census figures may be found in U. S. Bureau of the Census, PC(1)-34C *United States Census of Population, 1960, New York, General Social and Economic Characteristics, Table 35*, p. 34-206.

[fol. 399]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 5

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

28 September 1962

RANK ORDER OF REPRESENTATIVENESS  
(UPPER HOUSES, LOWER HOUSES,  
AND LEGISLATURES)

BY PERCENTAGE OF POPULATION NECESSARY  
TO ELECT MAJORITY OF MEMBERSHIP

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 28th day of  
September, 1962.

/s/ CLARICE R. SNEAD

Clarice R. Snead  
Notary Public  
Albermarle County, Virginia

My commission expires 6 February 1966

[Seal]

[Stamp—Received Oct. 2, 1962, Clerk,  
U. S. Dist. Court, Richmond, Va.]

[fol. 400]

Rank Order of Representativeness of Upper Houses of  
State Legislatures by Percentage of Population Necessary  
to Elect Majority of Membership\*

Rank	State	Jan. 1962
1	Oregon	47.8
2	Missouri	47.7
3	Vermont	47.0
4	Maine	46.9
5	West Virginia	46.7
6	New Hampshire	45.3
7	Wisconsin	45.0
8	Massachusetts	44.6
9	Arkansas	43.8
10	Kentucky	42.0
11	Virginia**	41.1
12	Ohio	41.0
13	Indiana	40.4
14	Minnesota	40.1
15	South Dakota	38.3
16	New York	36.9
17	North Carolina	36.9
18	Nebraska	36.6
19	Iowa	35.2
20	Alaska	35.0
21	Mississippi	34.6
22	Washington	33.9
[fol. 401]		
23	Connecticut	33.4
24	Pennsylvania	33.1
25	Louisiana	33.0
26	North Dakota	31.9
27	Texas	30.3
28	Colorado	29.8
29	Michigan	29.0
30	Illinois	28.7
31	Tennessee	26.9
32	Wyoming	26.9
33	Kansas	26.8
34	Alabama	25.1

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
35	Oklahoma	24.5
36	South Carolina	23.6
37	Delaware	22.0
38	Utah	21.3
39	New Jersey	19.0
40	Rhode Island	18.1
41	Idaho	16.6
42	Montana	16.1
43	New Mexico	14.0
44	Arizona	12.8
45	Florida	12.3
46	California	10.7
47	Nevada	8.0

\* As reported in *Compendium on Legislative Apportionment*, second edition (New York: National Municipal League, January, 1962). Less Md., Ga., Hawaii not reporting. Statistics and rank order do not reflect reapportionment in Alaska.

\*\* Based upon 1962 redistricting acts and calculated by Bureau of Public Administration staff.

[fol. 402]

Rank Order of Representativeness of Lower Houses of State Legislatures by Percentage of Population Necessary to Elect Majority of Membership\*

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
1	Alaska	49.0
2	Oregon	48.1
3	New Jersey	46.5
4	Rhode Island	46.5
5	South Carolina	46.2
6	Massachusetts	45.3
7	California	44.7
8	Michigan	44.0
9	New Hampshire	43.9
10	Virginia**	40.5
11	North Dakota	40.2
12	West Virginia	40.0
13	Wisconsin	40.0

Rank	State	Jan. 1962
14	Illinois	39.9
15	Maine	39.7
16	Texas	38.6
17	South Dakota	38.5
18	New York	38.2
19	Pennsylvania	37.7
20	Montana	36.6
21	Wyoming	35.8
22	Washington	35.3
23	Nevada	35.0
[fol. 403]		
24	Indiana	34.8
25	Minnesota	34.5
26	Kentucky	34.1
27	Louisiana	34.1
28	Arkansas	33.3
29	Utah	33.3
30	Idaho	32.7
31	Colorado	32.1
32	Ohio	30.3
33	Oklahoma	29.5
34	Mississippi	29.1
35	Tennessee	28.7
36	North Carolina	27.1
37	New Mexico	27.0
38	Iowa	26.9
39	Alabama	25.7
40	Missouri	20.3
41	Delaware	18.5
42	Kansas	18.5
43	Florida	14.7
44	Connecticut	12.0
45	Vermont	11.6

\* As reported in *Compendium on Legislative Apportionment*, second edition (New York: National Municipal League, January, 1962). Less Md., Ga., Hawaii, Arizona not reporting, and Nebraska with unicameral legislature. Statistics and rank order do not reflect reapportionment in Alaska.

\*\* Based upon 1962 redistricting acts and calculated by Bureau of Public Administration staff.

[fol. 404]

**Index of Representativeness, Rank Order  
American State Legislatures, 1962\***

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
1	Oregon	95.9
2	Massachusetts	89.9
3	New Hampshire	89.2
4	West Virginia	86.7
5	Maine	86.6
6	Wisconsin	85.0
7	Alaska	84.0
8	Virginia**	81.6
9	Arkansas	77.1
10	South Dakota	76.8
11	Kentucky	76.1
12	Indiana	75.2
13	New York	75.1
14	Minnesota	74.6
15	Nebraska	73.2
16	Michigan	73.0
17	North Dakota	72.1
18	Ohio	71.3
19	Pennsylvania	70.8
20	South Carolina	69.8
21	Washington	69.2
22	Texas	68.9
23	Illinois	68.6
24	Missouri	68.0
[fol. 405]		
25	Louisiana	67.1
26	New Jersey	65.5
27	Rhode Island	64.6
28	North Carolina	64.0
29	Mississippi	63.7
30	Wyoming	62.7
31	Iowa	62.1
32	Colorado	61.9
33	Vermont	58.6
34	Tennessee	55.6

Rank	State	Jan. 1962
35	California	55.4
36	Utah	54.6
37	Oklahoma	54.0
38	Montana	52.7
39	Alabama	50.8
40	Idaho	49.3
41	Connecticut	45.4
42	Kansas	45.3
43	Nevada	43.0
44	New Mexico	41.8
45	Delaware	40.5
46	Florida	27.0

\* As reported in *Compendium on Legislative Apportionment*, (New York: National Municipal League, January, 1962): Less Md., Ga., and Hawaii not reporting both houses and Ariz. reporting only one house. Statistics and rank order do not reflect reapportionment in Alaska.

\*\* Based upon 1962 redistricting acts and calculated by Bureau of Public Administration staff.

[fol. 406]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 6,

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

29 September 1962

RANK ORDER OF REPRESENTATIVENESS  
(UPPER HOUSES, LOWER HOUSES,  
AND LEGISLATURES)

BY PERCENTAGE OF POPULATION NECESSARY  
TO ELECT MAJORITY OF MEMBERSHIP  
PRIOR TO VIRGINIA 1962 REDISTRICTING

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 29th day of  
September, 1962.

/s/ CLARICE R. SNEAD

Clarice R. Snead  
Notary Public  
Albemarle County, Virginia

My commission expires 6 February 1966.

[Seal]

[Stamp—Received Oct. 2, 1962, Clerk,  
U. S. Dist. Court, Richmond, Va.]

[fol. 407]

Rank Order of Representativeness of Upper Houses of  
State Legislatures by Percentage of Population Necessary  
to Elect Majority of Membership

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
1	Oregon	47.8
2	Missouri	47.7
3	Vermont	47.0
4	Maine	46.9
5	West Virginia	46.7
6	New Hampshire	45.3
7	Wisconsin	45.0
8	Massachusetts	44.6
9	Arkansas	43.8
10	Kentucky	42.0
11	Ohio	41.0
12	Indiana	40.4
13	Minnesota	40.1
14	South Dakota	38.3
15	Virginia	37.7
16	New York	36.9
17	North Carolina	36.9
18	Nebraska	36.2
19	Iowa	35.2
20	Alaska	35.0
21	Mississippi	34.6
22	Washington	33.9
[fol. 408]		
23	Connecticut	33.4
24	Pennsylvania	33.1
25	Louisiana	33.0
26	North Dakota	31.9
27	Texas	30.3
28	Colorado	29.8
29	Michigan	29.0
30	Illinois	28.7
31	Tennessee	26.9
32	Wyoming	26.9

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
33	Kansas	26.8
34	Alabama	25.1
35	Oklahoma	24.5
36	South Carolina	23.6
37	Delaware	22.0
38	Utah	21.3
39	New Jersey	19.0
40	Rhode Island	18.1
41	Idaho	16.6
42	Montana	16.1
43	New Mexico	14.0
44	Arizona	12.8
45	Florida	12.3
46	California	10.7
47	Nevada	8.0

\* As reported in *Compendium on Legislative Apportionment*, second edition (New York: National Municipal League, January, 1962). Less Md., Ga., Hawaii not reporting. Statistics and rank order do not reflect reapportionment in Alaska.

[fol. 409]

Rank Order of Representativeness of Lower Houses of State Legislatures by Percentage of Population Necessary to Elect Majority of Membership\*

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
1	Alaska	49.0
2	Oregon	48.1
3	New Jersey	46.5
4	Rhode Island	46.5
5	South Carolina	46.2
6	Massachusetts	45.3
7	California	44.7
8	Michigan	44.0
9	New Hampshire	43.9
10	North Dakota	40.2
11	West Virginia	40.0
12	Wisconsin	40.0

Rank	State	Jan. 1962
13	Illinois	39.9
14	Maine	39.7
15	Texas	38.6
16	South Dakota	38.5
17	New York	38.2
18	Pennsylvania	37.7
19	Virginia	36.8
20	Montana	36.6
21	Wyoming	35.8
22	Washington	35.3
23	Nevada	35.0
[fol. 410]		
24	Indiana	34.8
25	Minnesota	34.5
26	Kentucky	34.1
27	Louisiana	34.1
28	Arkansas	33.3
29	Utah	33.3
30	Idaho	32.7
31	Colorado	32.1
32	Ohio	30.3
33	Oklahoma	29.5
34	Mississippi	29.1
35	Tennessee	28.7
36	North Carolina	27.1
37	New Mexico	27.0
38	Iowa	26.9
39	Alabama	25.7
40	Missouri	20.3
41	Delaware	18.5
41	Kansas	18.5
43	Florida	14.7
44	Connecticut	12.0
45	Vermont	11.6

\* As reported in *Compendium on Legislative Apportionment*, second edition (New York: National Municipal League, January, 1962). Less Md., Ga., Hawaii, Arizona not reporting, and Nebraska with unicameral legislature. Statistics and rank order do not reflect reapportionment in Alaska.

[fol. 411]

Index of Representativeness, Rank Order  
American State Legislatures, 1962\*

<i>Rank</i>	<i>State</i>	<i>Jan. 1962</i>
1	Oregon	95.9
2	Massachusetts	89.9
3	New Hampshire	89.2
4	West Virginia	86.7
5	Maine	86.6
6	Wisconsin	85.0
7	Alaska	84.0
8	Arkansas	77.1
9	South Dakota	76.8
10	Kentucky	76.1
11	Indiana	75.2
12	New York	75.1
13	Minnesota	74.6
14	Virginia	74.5
15	Nebraska	73.2
16	Michigan	73.0
17	North Dakota	72.1
18	Ohio	71.3
19	Pennsylvania	70.8
20	South Carolina	69.8
21	Washington	69.2
22	Texas	68.9
23	Illinois	68.6
[fol. 412]		
24	Missouri	68.0
25	Louisiana	67.1
26	New Jersey	65.5
27	Rhode Island	64.6
28	North Carolina	64.0
29	Mississippi	63.7
30	Wyoming	62.7
31	Iowa	62.1
32	Colorado	61.9
33	Vermont	58.6
34	Tennessee	55.6

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Rank	State	Jan. 1962
35	California	55.4
36	Utah	54.6
37	Oklahoma	54.0
38	Montana	52.7
39	Alabama	50.8
40	Idaho	49.3
41	Connecticut	45.4
42	Kansas	45.3
43	Nevada	43.0
44	New Mexico	41.0
45	Delaware	40.5
46	Florida	27.0

\* As reported in *Compendium on Legislative Apportionment*, (New York: National Municipal League, January, 1962). Less Md., Ga., and Hawaii not reporting both houses and Ariz. reporting only one house. Statistics and rank order do not reflect reapportionment in Alaska.

[fol. 413]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 7

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

27 September 1962

VIRGINIA, 1962 ACTS—SENATE  
APPORTIONMENT DATA

URBAN-RURAL REPRESENTATION SUMMARY

(The term "urban" as used in this summary includes the population of the independent cities and the counties of Arlington, Chesterfield, Fairfax, Henrico, Norfolk, Princess

Anne, and Roanoke.\* The term "rural" includes the population of the remaining counties.)

[Stamp—Received—Oct. 2, 1962—Clerk, U. S. Dist. Court—Richmond, Va.]

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 27th day of September, 1962.

CLARICE R. SNEAD  
Notary Public  
Albemarle County, Virginia

My commission expires 6 Feb. 1966

[Seal]

[fol. 414]

## SENATE - 1962 ACTS

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
1	4 3 after 1/1/63	Accomack Northampton Princess Anne Virginia Beach (1)	77,127 8,091 85,218	30,635 16,966 47,601	Yes (1)			951	
2	1	Norfolk City (2)	304,869	NONE	Yes (2)			50	
3	2 1 after 1/1/63	Norfolk County South Norfolk (1)	51,612 22,035 73,647	NONE	Yes (1)			344	
4	4	Halifax Charlotte Prince Edward South Boston (1)	5,974 5,974	33,637 13,368 14,121 61,126				1,626	Yes (1)
5	5	Isle of Wight Nansemond Southampton Suffolk Franklin (1)	12,609 7,264 19,873	17,164 31,366 19,931 68,461				1,330	Yes (1)
6	5	Greensville Prince George Surry Sussex Hopewell (1)	17,895 17,895	16,155 20,270 6,220 12,411 55,056				1,365	Yes (1)

Page 2.

[fol. 415]

<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>AREA SQUARE MILES</u>	<u>RURAL</u>
7	3	Brunswick Lunenburg Mecklenburg (1)	NONE	17,779 12,523 31,428 61,730				1,648	Yes (1)
8	3	Dinwiddie Nottoway Petersburg (1)	36,750 36,750	22,183 15,141 37,324		Yes (1)		823	
9	1	Arlington (1)	163,401	NONE	Yes (1)			24	
10	1	Portsmouth (1)	114,773	NONE	Yes (1)			18	
11	7	Appomattox Buckingham Cumberland Powhatan Amherst Nelson Amelia (1)	NONE	9,148 10,877 6,360 6,747 22,953 12,752 7,815 76,652				2,776	Yes (1)
12	2	Campbell Lynchburg (1)	54,790 54,790	32,958 32,958	Yes (1)			547	
13	5	Henry Patrick Pittsylvania Danville Martinsville (2)	46,577 18,798 65,375	40,335 15,282 58,296 113,913				1,889	Yes (2)

[fol. 416]

Page 3.

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	AREA SQUARE MILES	RURAL
14	5	Smyth Carroll Floyd Grayson Galax (1)	<u>5,254</u> 5,254	31,066 23,178 10,462 17,390 <u>82,096</u>				1,765	Yes (1)
15	4	Washington Lee Scott Bristol (1)	<u>17,144</u> 17,144	38,076 25,824 25,813 <u>89,713</u>				1,556	Yes (1)
16	3	Dickenson Wise Norton (1)	<u>5,013</u> 5,013	20,211 43,562 <u>63,773</u>				749	Yes (1)
17	3	Buchanan Russell Tazewell (1)	NONE	36,724 26,290 44,791 <u>107,805</u>				1,513	Yes (1)
18	4	Bland Giles Pulaski Wythe (1)	NONE	5,982 17,219 27,258 21,975 <u>72,434</u>				1,512	Yes (1)
19	8	Alleghany Bedford Botetourt Craig Rockbridge Buena Vista Clifton Forge Covington (1)	6,300 5,268 <u>11,062</u> 22,630	12,128 31,028 16,715 3,356 24,039 <u>87,266</u>				2,713	Yes (1)

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DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	AREA SQUARE MILES	RURAL
20	4	Franklin Montgomery Roanoke County Radford (1)	61,693 9,371 71,064	25,925 32,923 58,848	Yes (1)			1,395	
21	5	Augusta Bath Highland Staunton Waynesboro (1)	22,232 15,694 37,926	37,363 5,335 3,221 45,919		Yes (1)		1,958	
22	5	Page Rappahannock Rockingham Warren Harrisonburg (1)	11,916 11,916	15,572 5,368 40,485 14,655 76,080				1,673	Yes (1)
23	4	Clarke Frederick Shenandoah Winchester (1)	15,110 15,110	7,942 21,941 21,825 51,708				1,117	Yes (1)
24	5	Albemarle Fluvanna Greene Madison Charlottesville (1)	29,427 29,427	30,969 7,227 4,715 8,187 51,098				1,507	Yes (1)

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	AREA SQUARE MILES	RURAL
25	5	Goochland Louisa Orange Spotsylvania Fredericksburg (1)	<u>13,639</u> 13,639	9,206 12,959 12,900 13,819 <u>48,884</u>				1,572	Yes (1)
26	3	Culpeper Fauquier Loudoun (1)	NONE	15,088 24,066 24,549 <u>63,703</u>				1,566	Yes (1)
27	3	* Fairfax County Fairfax City Falls Church (2)	262,482 <u>10,192</u> 272,674	NONE	Yes (2)			407	
28	7	King George Lancaster Northumberland Prince William Richmond County Stafford Westmoreland (1)	NONE	7,243 9,174 10,185 50,164 6,375 16,876 <u>11,042</u> 111,059				1,564	Yes (1)
29	8	Caroline Hanover King William Essex King and Queen Middlesex Gloucester Mathews (1)	NONE	12,725 27,550 7,563 6,690 5,889 6,319 11,919 <u>7,121</u> 85,776				2,300	Yes (1)

\* See Sources, p. 7.

[fol. 419]

Page 6.

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
30	2	Newport News York (1)	113,662 <u>113,662</u>	21,583 <u>21,583</u>	Yes (1)			198	
31	1	Hampton (1)	89,258	NONE	Yes (1)			57	
32	6	Charles City Chesterfield James City New Kent Colonial Heights Williamsburg (1)	74,197 9,587 6,832 <u>87,616</u>	5,492 11,539 4,504 <u>21,535</u>	Yes (1)			1,015	
33	1	Richmond City (2)	219,958	NONE	Yes (2)			37	
34	1	Henrico (1)	117,339	NONE	Yes (1)			232	
35	1	Roanoke (1)	97,110	NONE	Yes (1)			26	
36	1	Alexandria (1)	91,023	NONE	Yes (1)			15	

\*\*\*\*\*

## SUMMARY: SENATE OF VIRGINIA - 1962 ACTS

NUMBER OF SENATORS OVER 50% URBAN	18	
NUMBER OF SENATORS OVER 45% URBAN	2	
NUMBER OF SENATORS OVER 40% URBAN	2	
NUMBER OF SENATORS OVER 60% RURAL	<u>20</u>	<u>20</u>

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	AREA SQUARE MILES	RURAL
30	2	Newport News York (1)	113,662 <u>113,662</u>	21,583 <u>21,583</u>	Yes (1)			198	
31	1	Hampton (1)	89,258	NONE	Yes (1)			57	
32	6	Charles City Chesterfield James City New Kent Colonial Heights Williamsburg (1)	71,197 9,587 6,832 <u>87,616</u>	5,492 11,539 4,504 <u>21,535</u>	Yes (1)			1,015	
33	1	Richmond City (2)	219,958	NONE	Yes (2)			37	
34	1	Henrico (1)	117,339	NONE	Yes (1)			232	
35	1	Roanoke (1)	97,110	NONE	Yes (1)			26	
36	1	Alexandria (1)	91,023	NONE	Yes (1)			15	

\*\*\*\*\*

## SUMMARY: SENATE OF VIRGINIA - 1962 ACTS

NUMBER OF SENATORS OVER 50% URBAN	18	
NUMBER OF SENATORS OVER 45% URBAN	2	
NUMBER OF SENATORS OVER 40% URBAN	-	
NUMBER OF SENATORS OVER 60% RURAL	<u>20</u>	<u>20</u>

[fol. 420]

## Sources

## Apportionment:

*Code of Virginia 1950 (1962 Supplement), Section 24-14.*

## Population:

U. S. Bureau of the Census, PC(1)-1A *United States Census of Population, 1960, United States Summary, Number of Inhabitants*, Table 24 (Virginia), pp. 1-61, 1-62; Table 30 (Virginia), p. 1-97.

\*U. S. Bureau of the Census, PC(1)-48C *United States Census of Population, 1960, Virginia, General Social and Economic Characteristics*, Table 34, p. 48-141; Table 35, pp. 48-141-48-143. This most recent U. S. Census Bureau publication reports Fairfax County (including Fairfax City) population as 262,482. The earlier publication cited above reported 275,002 as Fairfax County population.

## Area:

U. S. Bureau of the Census, PC(1)-48A *United States Census of Population, 1960, Virginia, Number of Inhabitants*, Table 6, pp. 48-12-48-13.

[fol. 421]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 8

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

27 September 1962

VIRGINIA, 1962 ACTS—HOUSE OF DELEGATES  
APPORTIONMENT DATA

URBAN-RURAL REPRESENTATION SUMMARY

(The term "urban" as used in this summary includes the population of the independent cities and the counties of Arlington, Chesterfield, Fairfax, Henrico, Norfolk, Princess Anne, and Roanoke. The term "rural" includes the population of the remaining counties.)

[Stamp—Received—Oct. 2, 1962—Clerk, U. S. Dist. Court  
—Richmond, Va.]

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 27th day of  
September, 1962.

CLARICE R. SNEAD  
Notary Public  
Albemarle County, Virginia

My commission expires 6 Feb. 1966

[Seal]

{fol. 422}

## HOUSE OF DELEGATES - 1962 ACTS

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	AREA SQUARE MILES	RURAL
1	1	Accomack (1)	NONE	30,635				470	Yes (1)
2	2	Accomack Northampton (1)	NONE	30,635 16,966 47,601				696	Yes (1)
3	2	Albemarle Greene (1)	NONE	30,969 4,715 35,684				892	Yes (1)
4	1	Charlottesville (1)	29,427	NONE	Yes (1)			6	
5	1	Alexandria (2)	91,023	NONE	Yes (2)			15	
6	3	Alleghany Covington Clifton Forge (1)	11,062 5,268 16,330	12,128  12,128	Yes (1)			452	
7	3	Amelia Powhatan Nottoway (1)	NONE	7,815 6,747 15,141 29,703				942	Yes (1)
8	2	Amherst Lynchburg (1)	54,790 54,790	22,953 22,953	Yes (1)			490	
9	1	Arlington (3)	163,401	NONE	Yes (3)			24	

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Page 2.

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
10	4	Augusta Highland Staunton Waynesboro (2)	22,232 <u>15,694</u> 37,926	37,363 3,221 <u>40,584</u>		Yes (2)		1,418	
11	1	Bedford (1)	NONE	31,028				770	Yes (1)
12	2	Bland Giles (1)	NONE	5,982 <u>17,219</u> 23,201				725	Yes (1)
13	3	Botetourt Craig Roanoke County (1)	61,693 <u>61,693</u>	16,715 3,356 <u>20,071</u>	Yes (1)			1,161	
14	2	Brunswick Lunenburg (1)	NONE	17,779 <u>12,523</u> 30,302				1,022	Yes (1)
15	1	Buchanan (1)	NONE	36,724				508	Yes (1)
16	2	Russell Dickenson (1)	NONE	26,290 <u>20,211</u> 46,501				818	Yes (1)
17	3	Buckingham Appomattox Cumberland (1)	NONE	10,877 9,148 <u>6,360</u> 26,385				1,207	Yes (1)

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Page 3.

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
18	1	Campbell (1)	NONE	32,958				524	Yes (1)
19	4	Caroline King George Essex King and Queen (1)	NONE	12,725 7,243 6,690 5,889 <u>32,547</u>				1,290	Yes (1)
20	2	Carroll Floyd (1)	NONE	23,178 10,462 <u>33,640</u>				877	Yes (1)
21	5	Charles City James City New Kent York Williamsburg (1)	6,832 <u>6,832</u>	5,492 11,539 4,504 21,583 <u>43,118</u>				670	Yes (1)
22	2	Charlotte Prince Edward (1)	NONE	13,368 14,121 <u>27,489</u>				824	Yes (1)
23	2	Chesterfield Colonial Heights (1)	71,197 9,587 <u>80,784</u>	NONE	Yes (1)			468	
24	3	Clarke Frederick Winchester (1)	15,110 <u>15,110</u>	7,942 21,941 <u>29,883</u>				610	Yes (1)

<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>AREA SQUARE MILES</u>	<u>RURAL</u>
25	1	Danville (1)	46,577	NONE	Yes (1)			14	
26	1	Hampton (1)	89,258	NONE	Yes (1)			57	
27	3	* Fairfax County) Fairfax City ) Falls Church (3)	262,482 <u>10,192</u> 272,674	NONE	Yes (3)			407	
28	2	Fauquier Rappahannock (1)	NONE	24,066 <u>5,368</u> 29,434				927	Yes (1)
29	3	Fluvanna Goochland Louisa (1)	NONE	7,227 9,206 <u>12,959</u> 29,392				1,085	Yes (1)
30	1	Franklin (1)	NONE	25,925				718	Yes (1)
31	3	Gloucester Mathews Middlesex (1)	NONE	11,910 7,121 <u>6,319</u> 25,359				444	Yes (1)
32	2	Grayson Galax (1)	5,254 <u>5,254</u>	17,390 <u>17,390</u>				453	Yes (1)

\* See Sources, p. 10.

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<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
33	2	Greenville Sussex (1)	NONE	16,155 <u>12,411</u> 28,566				797	Yes (1)
34	2	Halifax South Boston (1)	5,974 <u>5,974</u>	33,637 <u>33,637</u>				802	Yes (1)
35	2	Hanover King William (1)	NONE	27,550 <u>7,563</u> 35,113				744	Yes (1)
36	1	Henrico (1)	117,339	NONE	Yes (1)			232	
37	3	Henry Patrick Martinsville (2)	18,798 <u>18,798</u>	40,335 15,282 <u>55,617</u>				863	Yes (2)
38	3	Isla of Wight Nansemond Suffolk (1)	12,609 <u>12,609</u>	17,164 31,366 <u>48,530</u>				723	Yes (1)
39	4	Northumberland Westmoreland Lancaster Richmond County (1)	NONE	10,185 11,042 9,174 <u>6,375</u> 36,776				770	Yes (1)
40	1	Newport News (3)	113,662	NONE	Yes (3)			75	

<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>AREA SQUARE MILES</u>	<u>RURAL</u>
41	3	Lee Wise Norton (2)	  <u>5,013</u> 5,013	25,824 43,562 <u>69,386</u>				848	Yes (2)
42	1	Loudoun (1)	NONE	24,549				517	Yes (1)
43	1	Lynchburg (1)	54,790	NONE	Yes (1)			23	
44	3	Madison Culpeper Orange (1)	NONE   <u>12,900</u> 36,175	8,187 15,088 <u>12,900</u> 36,175				1,070	Yes (1)
45	1	Mecklenburg (1)	NONE	31,428				626	Yes (1)
46	2	Montgomery Radford (1)	<u>9,371</u> 9,371	32,923 <u>32,923</u>				400	Yes (1)
47	2	Nansemond Suffolk (1)	<u>12,609</u> 12,609	31,366 <u>31,366</u>				404	Yes (1)
48	2	Nelson Amherst (1)	NONE	12,752 <u>22,953</u> 35,705				935	Yes (1)

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
49	2 (1 after 1/1/63)	Norfolk County South Norfolk (2)	51,612 <u>22,035</u> 73,647	NONE	Yes (2)			344	
50	1	Norfolk City (6)	304,869	NONE	Yes (6)			50	
51	2	Page Warren (1)	NONE	15,572 <u>14,655</u> 30,227				535	Yes (1)
52	2	Petersburg Dinwiddie (2)	36,750 <u>36,750</u>	22,183 <u>22,183</u>	Yes (2)			515	
53	1	Pittsylvania (2)	NONE	58,296				1,012	Yes (2)
54	1	Portsmouth (2)	114,773	NONE	Yes (2)			18	
55	3	Prince George Surry Hopewell (1)	17,895 <u>17,895</u>	20,270 6,220 <u>26,490</u>			Yes (1)	568	
56	2 (1 after 1/1/63)	Princess Anne Virginia Beach (2)	77,127 <u>8,091</u> 85,218	NONE	Yes (2)			255	
57	1	Prince William (1)	NONE	50,164				345	Yes (1)

<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>AREA SQUARE MILES</u>	<u>RURAL</u>
58	1	Pulaski (1)	NONE	27,258				327	Yes (1)
59	2	Richmond City Henrico (8)	219,958 <u>117,339</u> 337,297	NONE	Yes (8)			269	
60	1	Roanoke County (1)	61,693	NONE	Yes (1)			277	
61	1	Roanoke City (2)	97,110	NONE	Yes (2)			26	
62	3	Rockbridge Bath Buena Vista (1)	<u>6,300</u> 6,300	24,039 5,335 <u>29,374</u>				1,147	Yes (1)
63	2	Rockingham Harrisonburg (2)	<u>11,916</u> 11,916	40,485 <u>40,485</u>				871	Yes (2)
64	1	Shenandoah (1)	NONE	21,825				507	Yes (1)
65	1	Smyth (1)	NONE	31,066				435	Yes (1)
66	2	Southampton Franklin (1)	<u>7,264</u> 7,264	19,931 <u>19,931</u>				607	Yes (1)

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<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>	<u>RURAL</u>
67	3	Spotsylvania Stafford Fredericksburg (1)	13,639 13,639	13,819 16,876 30,695				686	Yes (1)
68	1	Tazewell (1)	NONE	44,791				522	Yes (1)
69	3	Washington Scott Bristol (2)	17,144 17,144	38,076 25,813 63,889				1,122	Yes (2)
70	1	Wythe (1)	NONE	21,975				460	Yes (1)

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## SUMMARY: HOUSE OF DELEGATES - 1962 ACTS

NUMBER OF DELEGATES OVER 50% URBAN	45	
NUMBER OF DELEGATES OVER 45% URBAN	2	
NUMBER OF DELEGATES OVER 40% URBAN	1	
NUMBER OF DELEGATES RURAL	48	52 52

[fol. 431]

*Sources***Apportionment:**

*Code of Virginia 1950 (1962 Supplement), Section 24-12.*

**Population:**

U. S. Bureau of the Census, PC(1)-1A *United States Census of Population, 1960, United States Summary: Number of Inhabitants*, Table 24 (Virginia), pp. 1-61, 1-62; Table 30 (Virginia), p. 1-97.

- U. S. Bureau of the Census, PC(1)-48C *United States Census of Population, 1960, Virginia, General Social and Economic Characteristics*, Table 34, p. 48-141; Table 35, pp. 48-141-48-143. This most recent U. S. Census Bureau publication reports Fairfax County (including Fairfax City) population as 262,482. The earlier publication cited above reported 275,002 as Fairfax County population.

**Area:**

- U. S. Bureau of the Census, PC(1)-48A *United States Census of Population, 1960, Virginia, Number of Inhabitants*, Table 6, pp. 48-12-48-13.

[fol. 432]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 9

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

27 September 1962

VIRGINIA COMMISSION ON REDISTRICTING  
(REPORT, 1961)

RECOMMENDED SENATE APPORTIONMENT DATA  
URBAN-RURAL REPRESENTATION SUMMARY

(The term "urban" as used in this summary includes the population of the independent cities and the counties of Arlington, Chesterfield, Fairfax, Henrico, Norfolk, Princess Anne, and Roanoke. The term "rural" includes the population of the remaining counties.)

[Stamp—Received—Oct. 2, 1962—Clerk, U. S. Dist. Court  
—Richmond, Va.]

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director

Subscribed and sworn to before me on the 27th day of September, 1962.

CLARICE R. SNEAD


Notary Public

Albemarle County, Virginia

My commission expires 6 Feb. 1966

[Seal]

## DEFENDANTS' EXHIBIT 9 (Cont.)

(See opposite) 

[fol. 433]

## SENATE - VIRGINIA COMMISSION ON REDISTRICTING PLAN

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>RURAL</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>
1	4 (3 after 1/1/63)	Accomack Northampton Princess Anne Virginia Beach (1)	77,127 8,091 <u>85,218</u>	30,635 16,966 <u>47,601</u>	Yes (1)				951
2	4 (3 after 1/1/63)	Norfolk County South Norfolk Nansemond Suffolk (1)	51,612 22,035 <u>12,609</u> <u>86,256</u>	31,366 <u>31,366</u>	Yes (1)				748
3	1	Norfolk City (3)	304,869		Yes (3)				50
4	7	Prince George Hopewell Surry Sussex Southampton Franklin City Isle of Wight (1)	17,895     7,264 <u>25,159</u>	20,270  6,220 12,411 19,931 <u>17,164</u> <u>75,996</u>				Yes (1)	1,990
5	4	Lunenburg Mecklenburg Brunswick Greensville (1)		12,523 31,428 17,779 <u>16,155</u> <u>77,885</u>				Yes (1)	1,949

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[fol. 434]

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>RURAL</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>
6	3	Dinwiddie Petersburg Nottoway (1)	36,750 <u>36,750</u>	22,183 <u>15,141</u> 37,324		Yes (1)			823
7	4	Halifax South Boston Charlotte Prince Edward (1)	5,974 <u>5,974</u>	33,637 <u>13,368</u> 14,121 61,126				Yes (1)	1,626
8	7	Amherst Nelson Appomattox Buckingham Cumberland Powhatan Amelia (1)	<u>54,790</u>	22,953 12,752 9,148 10,877 6,360 6,747 7,815 76,652				Yes (1)	2,776
9	2	Lynchburg Campbell (1)	54,790 <u>54,790</u>	32,958 <u>32,958</u>	Yes (1)				547
10	5	Pittsylvania Danville Henry Martinsville Patrick (2)	46,577 <u>18,798</u> 65,375	58,296 <u>40,335</u> 15,282 113,913				Yes (2)	1,889
11	1	Portsmouth (1)	114,773		Yes (1)				18

[fol. 435]

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<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>RURAL</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>
12	6	Grayson Galax Carroll Floyd Montgomery Radford (1)	5,254     <u>2,371</u> <u>14,625</u>	17,390     <u>23,178</u> <u>10,462</u> <u>32,923</u>  <u>83,953</u>				Yes (1)	1,730
13	2	Roanoke County Franklin County (1)	61,693  <u>61,693</u>	 <u>25,925</u> <u>25,925</u>	Yes (1)				995
14	3	Scott Washington Bristol (1)	  <u>17,144</u> <u>17,144</u>	25,813 38,076  <u>63,889</u>				Yes (1)	1,122
15	1	Roanoke City (1)	97,110		Yes (1)				26
16	4	Lee Wise Norton Dickenson (1)	   5,013 <u>5,013</u>	25,824 43,562  <u>20,211</u> <u>89,597</u>				Yes (1)	1,183
17	3	Buchanan Russell Tazewell (1)		36,724 26,290 <u>44,791</u> <u>107,805</u>				Yes (1)	1,513

[fol. 436]

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	RURAL	AREA SQUARE MILES
18	5	Bland Giles Smyth Wythe Pulaski (1)		5,982 17,219 31,066 21,975 27,258 103,500				Yes (1)	1,957
19	8	Craig Alleghany Covington Clifton Forge Botetourt Rockbridge Buena Vista Bedford (1)	11,062 5,268   6,300 22,630	3,356 12,128   16,715 24,039 31,028 87,266				Yes (1)	2,713
20	5	Highland Bath Augusta Staunton Waynesboro (1)	22,232 15,694 37,926	3,221 5,335 37,363 45,919		Yes (1)			1,958
21	5	Rockingham Harrisonburg Page Rappahannock Warren (1)	11,916    11,916	40,485  15,572 5,368 14,655 76,080				Yes (1)	1,673

[fol. 437]

<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>RURAL</u>	<u>AREA SQUARE MILES</u>
22	5	Shenandoah Frederick Winchester Clarke Loudoun (1)	15,110     <u>15,110</u>	21,825 21,941  7,942 <u>24,549</u> 76,257				Yes (1)	1,634
23	1	Richmond City (2)	219,958		Yes (2)				37
24	1	Henrico (1)	117,339		Yes (1)				232
25	1	Newport News (1)	113,662		Yes (1)				75
26	5	Chesterfield Colonial Heights Charles City James City Williamsburg (1)	71,197 9,587   <u>6,832</u> 87,616	5,492 11,539   <u>17,031</u>	Yes (1)				803
27	2	Hampton York (1)	89,258  <u>89,258</u>	21,583 <u>21,583</u>	Yes (1)				180
28	9	Caroline Hanover Essex King and Queen King William New Kent Gloucester Mathews Middlesex (1)		12,725 27,550 6,690 5,889 7,563 4,504 11,919 7,121 6,319 <u>90,280</u>				Yes (1)	2,512

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>RURAL</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>
29	7	Fauquier Culpeper Orange Spotsylvania Fredericksburg Louisa Goochland (1)	13,639	24,066 15,088 12,900 13,819  12,959 9,206 <u>88,038</u>				Yes (1)	2,621
30	7	Prince William Stafford King George Westmoreland Northumberland Richmond County Lancaster (1)		50,164 16,876 7,243 11,042 10,185 6,375 9,174 <u>111,059</u>				Yes (1)	1,564
31	5	Madison Greene Albemarle Charlottesville Fluvanna (1)	29,427	8,187 4,715 30,969  7,227 <u>51,098</u>				Yes (1)	1,507
32	1	Alexandria (1)	91,023			Yes (1)			15
33	1	Arlington (1)	163,401			Yes (1)			24

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>RURAL</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>
34	3	* Fairfax County) Fairfax City ) Falls Church (2)	262,482 <u>10,192</u> 272,674		Yes (2)				407
35	4	Arlington Fairfax County) Fairfax City ) Falls Church (1)	163,401  262,482 <u>10,192</u> 436,075		Yes (1)				431

\* See Sources, p. 8.

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## SUMMARY: SENATE

NUMBER OF SENATORS OVER 50% URBAN	20	
NUMBER OF SENATORS OVER 45% URBAN	2	
NUMBER OF SENATORS OVER 40% URBAN	-	
NUMBER OF SENATORS OVER 60% RURAL	<u>22</u>	<u>18</u> 18

[fol:440]

*Sources***Apportionment:**

Report of the Commission on Redistricting to the Governor and the General Assembly of Virginia, *Reapportionment of the State for Representation* (Richmond: Department of Purchases and Supply, 1961), pp. 8-17.

**Population:**

U. S. Bureau of the Census, PC(1)-1A *United States Census of Population, 1960, United States Summary, Number of Inhabitants*, Table 24 (Virginia), pp. 1-61, 1-62; Table 30 (Virginia), p. 1-97.

\*U. S. Bureau of the Census, PC(1)-48C *United States Census of Population, 1960, Virginia, General Social and Economic Characteristics*, Table 34, p. 48-141; Table 35, pp. 48-141-48-143. This most recent U. S. Census Bureau publication reports Fairfax County (including Fairfax City) population as 262,482. The earlier publication cited above reported 275,002 as Fairfax County population.

**Area:**

U. S. Bureau of the Census, PC(1)-48A *United States Census of Population, 1960, Virginia, Number of Inhabitants*, Table 6, pp. 48-12-48-13.

[fol. 441]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 10

UNIVERSITY OF VIRGINIA  
CHARLOTTESVILLE

BUREAU OF PUBLIC ADMINISTRATION  
207 MINOR HALL

27 September 1962

VIRGINIA COMMISSION ON REDISTRICTING  
(REPORT, 1961)

RECOMMENDED HOUSE OF DELEGATES  
APPORTIONMENT DATA

URBAN-RURAL REPRESENTATION SUMMARY

(The term "urban" as used in this summary includes the population of the independent cities and the counties of Arlington, Chesterfield, Fairfax, Henrico, Norfolk, Princess Anne, and Roanoke. The term "rural" includes the population of the remaining counties.)

[Stamp—Received—Oct. 2, 1962—Clerk, U. S. Dist. Court  
—Richmond, Va.]

The data and the summary contained herein were prepared under my direction by members of the staff of the Bureau of Public Administration of the University of Virginia and, to the best of my knowledge, are accurate based upon the sources cited.

/s/ WELDON COOPER

Weldon Cooper  
Director


Subscribed and sworn to before me on the 27th day of  
September, 1962.

CLARICE R. SNEAD  
Notary Public  
Albemarle County, Virginia

My commission expires 6 Feb. 1966

[Seal]

DEFENDANTS' EXHIBIT 10 (Cont.)

(See opposite) 

[fol. 442]

## HOUSE OF DELEGATES - VIRGINIA COMMISSION ON REDISTRICTING PLAN

<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>RURAL</u>	<u>AREA SQUARE MILES</u>
1	1	Accomack (1)		30,635				Yes (1)	470
2	2	Accomack Northampton (1)		30,635 16,966 47,601				Yes (1)	696
3	2	Virginia Beach Princess Anne (2)	8,091 77,127 85,218		Yes (2)				255
4	1	Norfolk City (7)	304,869		Yes (7)				50
5	1	Portsmouth (2)	114,773		Yes (2)				18
6	2	Norfolk County South Norfolk (2)	51,612 22,035 73,647		Yes (2)				344
7	5	Nansemond Suffolk Isle of Wight Southampton Franklin City (2)	12,609 7,264 19,873	31,366 17,164 19,931 68,461				Yes (2)	1,330
8	3	Surry Sussex Greensville (1)		6,220 12,411 16,155 34,786				Yes (1)	1,077

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	RURAL	AREA SQUARE MILES
9	2	Lunenburg Brunswick (1)		12,523 <u>17,779</u> 30,302				Yes (1)	1,022
10	1	Mecklenburg (1)		31,428				Yes (1)	626
11	2	Prince George Hopewell (1)		20,270 <u>17,895</u> 17,895		Yes (1)			288
12	1	Petersburg (1)	36,750		Yes (1)				8
13	3	Dinwiddie Nottoway Amelia (1)		22,183 <u>15,141</u> 7,815 45,139				Yes (1)	1,181
14	4	Powhatan Cumberland Buckingham Nelson (1)		6,747 6,360 10,877 <u>12,752</u> 36,736				Yes (1)	1,600
15	3	Charlotte Prince Edward Appomattox (1)		13,368 14,121 <u>9,148</u> 36,637				Yes (1)	1,167
16	1	Hampton (2)	89,258		Yes (2)				57
17	1	Newport News (3)	113,662		Yes (3)				75

[fol. 444]

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DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	RURAL	AREA SQUARE MILES
18	4	James City York Williamsburg Charles City (1)	6,832   <u>6,832</u>	11,539 21,583  5,492 <u>38,614</u>				Yes (1)	458
19	3	Hanover King William New Kent (1)		27,550 7,563 4,504 <u>39,617</u>				Yes (1)	956
20	3	Gloucester Mathews Middlesex (1)		11,919 7,121 6,319 <u>25,359</u>				Yes (1)	444
21	4	Northumberland Westmoreland Lancaster Richmond County (1)		10,185 11,042 9,174 6,375 <u>36,776</u>				Yes (1)	770
22	4	King George Caroline Essex King and Queen (1)		7,243 12,725 6,690 5,889 <u>32,547</u>				Yes (1)	1,290
23	3	Spotsylvania Fredericksburg Stafford (1)	13,639  <u>13,639</u>	13,819  16,876 <u>30,695</u>				Yes (1)	686
24	1	Prince William (1)		50,164				Yes (1)	345

[fol. 445]

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<u>LIST NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER 50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>RURAL</u>	<u>AREA SQUARE MILES</u>
25	3	Fluvanna Goochland Louisa (1)		7,227 9,206 <u>12,959</u> 29,392				Yes (1)	1,085
26	2	Albemarle Greene (1)		30,969 <u>4,715</u> 35,684				Yes (1)	892
27	1	Charlottesville (1)	29,427		Yes (1)				6
28	1	Richmond City (6)	219,958		Yes (6)				37
29	1	Henrico (3)	117,339		Yes (3)				232
30	2	Chesterfield Colonial Heights (2)	71,197 <u>9,587</u> 80,784		Yes (2)				468
31	2	Halifax South Boston (1)	5,974 <u>5,974</u>	33,637 <u>33,637</u>				Yes (1)	802
32	1	Lynchburg (1)	54,790		Yes (1)				23
33	2	Lynchburg Amherst (1)	54,790 <u>54,790</u>	22,953 <u>22,953</u>	Yes (1)				490
34	1	Campbell (1)		32,958				Yes (1)	524

[fol. 446]

- 5 -

<u>DIST.</u> <u>NO.</u>	<u>NO.</u> <u>GOV.</u> <u>UNITS</u>	<u>COUNTIES</u> <u>AND CITIES</u>	<u>URBAN</u> <u>POPULATION</u>	<u>RURAL</u> <u>POPULATION</u>	<u>OVER</u> <u>50%</u> <u>URBAN</u>	<u>OVER</u> <u>45%</u> <u>URBAN</u>	<u>OVER</u> <u>40%</u> <u>URBAN</u>	<u>RURAL</u>	<u>AREA</u> <u>SQUARE</u> <u>MILES</u>
35	1	Bedford (1)		31,028 <sup>0</sup>				Yes (1)	770
36	1	Pittsylvania (2)		58,296				Yes (2)	1,012
37	1	Danville (1)	46,577		Yes (1)				14
38	3	Rockbridge Buena Vista Bath (1)	6,300 <u>6,300</u>	24,039 <u>5,335</u> 29,374				Yes (1)	1,147
39	4	Augusta Staunton Waynesboro Highland (2)	22,232 15,694 <u>37,926</u>	37,363 <u>3,221</u> 40,584		Yes (2)			1,418
40	3	Culpeper Madison Orange (1)		15,088 8,187 <u>12,900</u> 36,175				Yes (1)	1,070
41	2	Page Warren (1)		15,572 <u>14,655</u> 30,227				Yes (1)	535
42	2	Rockingham Harrisonburg (1)	<u>11,916</u> 11,916	40,485 <u>40,485</u>				Yes (1)	871

[fol. 447]

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DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	RURAL	AREA SQUARE MILES
43	3	Rockingham Harrisonburg Shenandoah (1)	11,916 <u>11,916</u>	40,485 <u>21,825</u> 62,310				Yes (1)	1,378
44	2	Fauquier Rappahannock (1)		24,066 <u>5,368</u> 29,434				Yes (1)	927
45	1	Loudoun (1)		24,549				Yes (1)	517
46	3	Frederick Winchester Clarke (1)	15,110 <u>15,110</u>	21,941 <u>7,942</u> 29,883				Yes (1)	610
47	4	Alleghany Covington Clifton Forge Graig (1)	11,062 5,268 <u>16,330</u>	12,128 <u>3,356</u> 15,484	Yes (1)				788
48	1	Roanoke County (1)	61,693		Yes (1)				277
49	2	Roanoke County Botetourt (1)	61,693 <u>61,693</u>	16,725 <u>16,715</u>	Yes (1)				825
50	1	Roanoke City (2)	97,110		Yes (2)				26

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<u>DIST. NO.</u>	<u>NO. GOV. UNITS</u>	<u>COUNTIES AND CITIES</u>	<u>URBAN POPULATION</u>	<u>RURAL POPULATION</u>	<u>OVER .50% URBAN</u>	<u>OVER 45% URBAN</u>	<u>OVER 40% URBAN</u>	<u>RURAL</u>	<u>AREA SQUARE MILES</u>
51	2	Montgomery Radford (1)	<u>9,371</u> 9,371	32,923 <u>32,923</u>				Yes (1)	400
52	2	Franklin Floyd (1)		25,925 <u>10,462</u> 36,387				Yes (1)	1,101
53	3	Grayson Galax Carroll (1)	5,254 <u>5,254</u>	17,390 <u>23,178</u> 40,568				Yes (1)	947
54	2	Wythe Bland (1)		21,975 <u>5,982</u> 27,957				Yes (1)	829
55	2	Pulaski Giles (1)		27,258 <u>17,219</u> 44,477				Yes (1)	683
56	1	Smyth (1)		31,066				Yes (1)	435
57	1	Tazewell (1)		44,791				Yes (1)	522
58	3	Patrick Henry Martinsville (2)	<u>18,798</u> 18,798	15,282 40,335 <u>55,617</u>				Yes (2)	863
59	1	Buchanan (1)		36,724				Yes (1)	508

[fol. 449]

DIST. NO.	NO. GOV. UNITS	COUNTIES AND CITIES	URBAN POPULATION	RURAL POPULATION	OVER 50% URBAN	OVER 45% URBAN	OVER 40% URBAN	RURAL	AREA- SQUARE MILES
60	3	Wise Horton Dickenson (2)	5,013	43,562 <u>20,211</u> 63,773				Yes (2)	749
61	1	Lee (1)		25,824				Yes (1)	434
62	1	Scott (1)		25,813				Yes (1)	539
63	1	Russell (1)		26,290				Yes (1)	483
64	2	Washington Bristol (2)	<u>17,144</u> 17,144	38,076 <u>38,076</u>				Yes (2)	583
65	3	* Fairfax County) Fairfax City ) Falls Church (4)	262,482 <u>10,192</u> 272,674		Yes (4)				407
66	1	Alexandria (2)	91,023		Yes (2)				15
67	1	Arlington (3)	163,401		Yes (3)				24

\* See Sources, p. 10.

\*\*\*\*\*

SUMMARY: HOUSE OF DELEGATES

NUMBER OF DELEGATES OVER 50% URBAN,	48	
NUMBER OF DELEGATES OVER 45% URBAN	3	
NUMBER OF DELEGATES OVER 40% URBAN	0	
NUMBER OF DELEGATES OVER 60% RURAL		49
	<u>51</u>	<u>49</u>

[fol. 451]

*Sources***Apportionment:**

Report of the Commission on Redistricting to the Governor and the General Assembly of Virginia, *Reapportionment of the State for Representation* (Richmond: Department of Purchases and Supply, 1961), pp. 8-17.

**Population:**

U. S. Bureau of the Census, PC(1)-1A *United States Census of Population, 1960, United States Summary, Number of Inhabitants*, Table 24 (Virginia), pp. 1-61, 1-62; Table 30 (Virginia), p. 1-97.

\*U. S. Bureau of the Census, PC(1)-48C *United States Census of Population, 1960, Virginia, General Social and Economic Characteristics*, Table 34, p. 48-141; Table 35, pp. 48-141-48-143. This most recent U. S. Census Bureau publication reports Fairfax County (including Fairfax City) population as 262,482. The earlier publication cited above reported 275,002 as Fairfax County population.

**Area:**

U. S. Bureau of the Census, PC(1)-48A *United States Census of Population, 1960, Virginia, Number of Inhabitants*, Table 6, pp. 48-12-48-13.

[fol. 452]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 11

U. S. CENSUS OF POPULATION: 1960

Final Report PC(1)-48D.

DETAILED CHARACTERISTICS

VIRGINIA

[fol. 453]

AREA CLASSIFICATIONS

USUAL PLACE OF RESIDENCE

In accordance with census practice dating back to 1790, each person enumerated in the 1960 Census was counted as an inhabitant of his usual place of abode, which is generally construed to mean the place where he lives and sleeps most of the time. This place is not necessarily the same as his legal residence, voting residence, or domicile; however, in the vast majority of cases, the use of these different bases of classification would produce substantially the same statistics, although there may be appreciable differences for a few areas.

In the application of this rule, persons were not always counted as residents of the places in which they happened to be found by the census enumerators. Persons in the larger hotels, motels, and similar places were enumerated on the night of March 31, and those whose usual place of residence was elsewhere were allocated to their homes. In addition, information on persons away from their usual place of residence was obtained from other members of their families, landladies, etc. If an entire family was expected to be away during the whole period of the enumeration, information on it was obtained from neighbors. A matching process was used to eliminate duplicate reports for a per-

son who reported for himself while away from his usual residence and who was also reported at his usual residence by someone else.

Persons in the Armed Forces quartered on military installations were enumerated as residents of the States, counties, and minor civil divisions in which their installations were located. Members of their families were enumerated where they actually resided. As in 1950, college students were considered residents of the communities in which they were residing while attending college. The crews of vessels of the U.S. Navy and of the U.S. Merchant Marine in harbors of the United States were counted as part of the population of the ports in which their vessels were berthed on April 1, 1960. Inmates of institutions, who ordinarily live there for long periods of time, were counted as inhabitants of the place in which the institution was located, whereas patients in general hospitals, who ordinarily remain for short periods of time, were counted at, or allocated to, their homes. Persons without a usual place of residence were counted where they were enumerated.

Persons staying overnight at a mission, flophouse, jail, detention center, reception and diagnostic center, or other similar place on a specified night (for example, April 8 in some areas) were enumerated on that night as residents of that place.

Americans who were overseas for an extended period (in the Armed Forces, working at civilian jobs, studying in foreign universities, etc.) are not included in the population of any of the States or the District of Columbia. On the other hand, persons temporarily abroad on vacations, business trips, and the like, were enumerated at their usual residence on the basis of information received from members of their families or from neighbors.

#### URBAN-RURAL RESIDENCE

According to the definition adopted for use in the 1960 Census, the urban population comprises all persons living in (a) places of 2,500 inhabitants or more incorporated as cities, boroughs, villages, and towns (except towns in New England, New York, and Wisconsin); (b) the densely

settled urban fringe, whether incorporated or unincorporated, of urbanized areas (see section below); (c) towns in New England and townships in New Jersey and Pennsylvania which contain no incorporated municipalities as subdivisions and have either 25,000 inhabitants or more or a population of 2,500 to 25,000 and a density of 1,500 persons or more per square mile; (d) counties in States other than the New England States, New Jersey, and Pennsylvania that have no incorporated municipalities within their boundaries and have a density of 1,500 persons or more per square mile; and (e) unincorporated places of 2,500 inhabitants or more. In other words, the urban population comprises all persons living in urbanized areas and in places of 2,500 inhabitants or more outside urbanized areas (see section on "Places").

This definition of urban is substantially the same as that used in 1950; the major difference between 1950 and 1960 is the designation in 1960 of urban towns in New England and of urban townships in New Jersey and Pennsylvania. The effect on population classification arising from this change was actually small because, in 1950, most of the population living in such places was classified as urban by virtue of residence in an urbanized area or in an unincorporated urban place. (See sections below.) In the previous definitions, the urban population comprised all persons living in incorporated places of 2,500 inhabitants or more and areas (usually minor civil divisions) classified as urban under somewhat different special rules relating to population size and density. In all definitions, the population not classified as urban constitutes the rural population.

The most important component of the urban territory in both definitions is the group of incorporated places having 2,500 inhabitants or more. A definition of urban territory restricted to such places, however, excludes a number of equally large and densely settled places merely because they are not incorporated places. Under the definition used previous to 1950, an effort was made to avoid some of the more obvious omissions by the inclusion of selected places which were classified as urban under special rules. Even with these rules, however, many large and closely built-up places were excluded from the urban territory.

To improve its measure of the urban population, the Bureau of the Census adopted, in 1950, the concept of the urbanized areas and defined the larger unincorporated places as urban. All the population residing in the urban-fringe areas and in unincorporated places of 2,500 or more is classified as urban, according to the current definition. The urban towns, townships, and counties as defined for the 1960 Census are somewhat similar in concept to the minor civil divisions classified as urban under special rules in 1940 and 1930.

[fol. 454]

Table 115.—EMPLOYMENT STATUS, BY AGE, COLOR, AND SEX,  
FOR THE STATE, URBAN AND RURAL, AND FOR  
STANDARD METROPOLITAN STATISTICAL AREAS  
AND COUNTIES OF 25,000 OR MORE: 1960—Con.

[Percent not shown where less than 0.1 or where  
base is less than 200]

## COUNTIES

### FAIRFAX

Area, Age, Color, and Sex	Armed Forces
Male, 14 years and over .....	16 454
14 to 19 years .....	1 246
14 years .....	
15 years .....	5
16 years .....	
17 years .....	86
18 years .....	495
19 years .....	660
20 to 24 years .....	4 103
20 years .....	703
21 years .....	635
22 years .....	506
23 years .....	1 145
24 years .....	1 114

## Area, Age, Color, and Sex

Armed  
Forces

25 to 29 years	1 393
30 to 34 years	1 637
35 to 39 years	3 149
40 to 44 years	3 325
45 to 49 years	1 178
50 to 54 years	356
55 to 59 years	54
60 to 64 years	13
65 to 69 years	
70 to 74 years	
75 to 79 years	
80 to 84 years	
85 years and over	
Female, 14 years and over	239
14 to 19 years	21
14 years	
15 years	
16 years	
17 years	
18 years	3
19 years	18
20 to 24 years	45
20 years	22
21 years	6
22 years	
23 years	14
24 years	3
25 to 29 years	35
30 to 34 years	36
35 to 39 years	16
40 to 44 years	42
45 to 49 years	21
50 to 54 years	9
55 to 59 years	4
60 to 64 years	10
65 to 69 years	
70 to 74 years	
75 to 79 years	

## Area, Age, Color, and Sex

Armed  
Forces

80 to 84 years .....  
 85 years and over .....

## NORFOLK CITY—TOTAL

Male, 14 years	
and over .....	43 946
14 to 19 years .....	10 057
14 years .....	4
15 years .....	
16 years .....	18
17 years .....	860
18 years .....	3 504
19 years .....	5 671
20 to 24 years .....	16 831
20 years .....	6 062
21 years .....	3 903
22 years .....	3 047
23 years .....	2 055
24 years .....	1 764
25 to 29 years .....	5 419
30 to 34 years .....	5 065
35 to 39 years .....	4 052
40 to 44 years .....	1 710
45 to 49 years .....	504
50 to 54 years .....	188
55 to 59 years .....	45
60 to 64 years .....	4
65 to 69 years .....	71
70 to 74 years .....	
75 to 79 years .....	
80 to 84 years .....	
85 years and over .....	
[fol. 455]	

## COUNTIES—Con.

## NORFOLK CITY—TOTAL—Con.

Female, 14 years	
and over .....	435
14 to 19 years .....	147
14 years .....	
15 years .....	

Area, Age, Color, and Sex	Armed Forces
16 years .....	.....
17 years .....	.....
18 years .....	52
19 years .....	95
20 to 24 years .....	206
20 years .....	69
21 years .....	62
22 years .....	39
23 years .....	15
24 years .....	21
25 to 29 years .....	26
30 to 34 years .....	29
35 to 39 years .....	19
40 to 44 years .....	8
45 to 49 years .....	.....
50 to 54 years .....	.....
55 to 59 years .....	.....
60 to 64 years .....	.....
65 to 69 years .....	.....
70 to 74 years .....	.....
75 to 79 years .....	.....
80 to 84 years .....	.....
85 to 89 years .....	.....

[fol. 456]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

## DEFENDANTS' EXHIBIT 12

COMMONWEALTH OF VIRGINIA

(Emblem)

Office of the  
Secretary of the Commonwealth

I, MARTHA BELL CONWAY Secretary of the Commonwealth,  
do hereby certify, That the attached is a full, true and cor-  
rect copy of the statement made by Governor A. S. Harri-  
son, Jr., on April 7, 1962.

(Seal)

Given under my hand and under the Great Seal of the Commonwealth at Richmond, this 2nd day of October in the year of our Lord one thousand nine hundred and sixty-two and in the 187th year of the Commonwealth.

/s/ MARTHA BELL CONWAY  
*Secretary of the Commonwealth*

[fol. 457]

Statement by Governor Harrison re HB 250 and SB 145

April 7, 1962

I have this day signed House Bill No. 250 and Senate Bill No. 145, which reapportion House and Senatorial districts in accordance with Section 43 of the Constitution of Virginia. In approving these enactments, I am not unmindful of the disparity in population between some districts or of the recent pronouncement of the United States Supreme Court upon the subject of legislative apportionment.

Unlike Section 55 of the Virginia Constitution, relating to the reapportionment of Congressional districts, Section 43 of the Virginia Constitution contains no criteria governing the method of reapportioning House and Senatorial seats in the General Assembly; nor does the Constitution of Virginia, unlike those of many States, possess a built-in bias favoring either rural or urban areas. Thus the responsibility—and the authority—for determining the manner in which the membership of the Legislature is to be apportioned throughout the State rests with the General Assembly.

Historically, population has been utilized as the principal factor in redistricting in Virginia, although population alone has never been deemed the sole basis of redistricting. The General Assembly—properly, I think—has always considered not only population, but also geographical area, the number of political subdivisions within a district, terrain, and community of interest, in drawing district lines.

In view of our numerous small political subdivisions and the undesirability of dividing any city or county between two separate legislative districts, Virginia would be faced with an utterly hopeless situation, were population the sole

basis of reapportionment. Important as population may be, it must be remembered that members of the General Assembly represent the various political subdivisions within their separate districts, as well as the citizens comprising their constituencies. A legislator representing a single city has to deal with only one group of constitutional officers, one school board and one city council. On the other hand, a legislator representing four political entities has four times the number of such officers to whom he must be responsive. It is a matter of common knowledge that the business of most of our political subdivisions is carried on through their constitutional officers or other elected and appointed officials. In my opinion, it is imperative that we confine the number of such political subdivisions within a single district to the absolute minimum. Needless to say, this minimum cannot be maintained effectively by dividing political subdivisions between two legislative districts. Indeed, the Supreme Court of Appeals of Virginia has pointed out that:

"From the early history of Virginia, even in Colonial days, the community of interest in the respective counties has been recognized, and in no division of the State for any governmental purpose has any county line been broken."

"Unless equality of population be permitted to overbalance completely all considerations of compactness, contiguity, habit, convenience of the people, and community of interest, I am convinced that the present plan is a fair reapportionment of Virginia's legislative representation. The State of Virginia is territorially divided into fairly well-defined areas, and the present redistricting plan preserves the territorial integrity of these areas. While territorial distinctions can be made in many instances between rural [fol. 458] and urban areas, it is now quite apparent that the rural legislator no longer represents a rural constituency only. Virginia is fast becoming industrialized and, as this transition takes place, the representatives of rural areas must be prepared to cope with problems which once were confined principally to urban districts.

I feel it only fair to emphasize the many difficulties which confronted the General Assembly, in making the present reapportionment of legislative representation. At best, redistricting is no easy task, and Virginia is a large State with diverse interests and habits. A number of its political subdivisions border along the Atlantic Seaboard and the Chesapeake Bay, while two counties are separated from the mainland. In view of the massive population growth in the Northern Virginia and the Tidewater areas, as compared with that in the mountainous regions, I think it commendable that the General Assembly has been able to maintain the high degree of representativeness in each of the legislative chambers that has been demonstrated over the years.

To any who may be disposed to lament a lack of urban representation, I would point out that fifty-five of the one hundred House seats and twenty-nine of the forty Senatorial seats are representative, in whole or in part, of urban areas. Moreover, the most reliable comparative studies available confirm that Virginia ranks among the top ten States in the representative quality of each of its legislative chambers.

The recent invasion by the United States Supreme Court into the field of State legislative redistricting in the recent Tennessee case need not be cause for alarm in Virginia. The apportionment situation in Virginia is completely at variance with that which exists in Tennessee, and I do not believe that the recent decision would constitute a precedent for redistricting in Virginia. The General Assembly has always met the obligation imposed by Section 43 of the Virginia Constitution and, in my opinion, it has again fairly reapportioned the legislative representation of the Commonwealth.

[fol. 459]

IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

INTERVENORS' EXHIBIT 1

1962 General Assembly Redistricting

8/28/62 GH\*

\* Pencil notation.

## VIRGINIA

## SENATE

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 1 Accomack Northampton Princess Anne Virginia Beach	1	132,819	.75
✓ District 2 Norfolk City	2	152,435	.65
District 3 Norfolk County South Norfolk	1	73,647	1.35
District 4 Halifax Charlotte Prince Edward South Boston	1	67,100	1.48
District 5 Isle of Wight Nansemond Southampton Suffolk Franklin City	1	88,334	1.12
District 6 Greensville Prince George Surry Sussex Hopewell	1	72,951	1.36
District 7 Brunswick Lunenburg Mecklenburg	1	61,730	1.61
District 8 Dinwiddie Nottoway Petersburg	1	74,074	1.34
✓ District 9 Arlington	1	163,401	.61

[fol. 460]

## VIRGINIA

## SENATE

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 10 Portsmouth	1	114,773	.86
District 11 Appomattox Buckingham Cumberland Powhatan Amherst Nelson Amelia	1	76,652	1.29
District 12 Campbell Lynchburg	1	87,748	1.13
District 13 Henry Patrick Pittsylvania Danville Martinsville	2	89,644 (2 Senators)	1.11
District 14 Smyth Carroll Floyd Grayson Galax	1	87,350	1.14
District 15 Washington Lee Scott Bristol	1	106,857	.93
District 16 Dickenson Wise Norton	1	68,786	1.44
District 17 Buchanan Russell Tazewell	1	107,805	.92

[fol. 461]

VIRGINIA

SENATE

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 18 Bland Giles Pulaski Wythe	1	72,434	1.37
District 19 Alleghany Bedford Botetourt Craig Rockbridge Buena Vista Clifton Forge Covington	1	109,896	.90
District 20 Franklin <i>County</i> Montgomery Roanoke County Radford	1	129,912	.76
District 21 Augusta Bath Highland Staunton Waynesboro	1	83,845	1.18
District 22 Page Rappahannock Rockingham Warren Harrisonburg	1	87,996	1.13
District 23 Clarke Frederick Shenandoah Winchester	1	66,818	1.48

[fol. 462]

## VIRGINIA

## SENATE

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 24 Albemarle Fluvanna Greene Madison Charlottesville	1	80,525	1.23
District 25 Goochland Louisa Orange Spotsylvania Fredericksburg	1	62,523	1.59
District 26 Culpeper Fauquier Loudoun	1	63,703	1.56
✓ District 27 Fairfax County Fairfax City Falls Church	2	142,597	.70
District 28 King George Lancaster Northumberland Prince William Richmond County Stafford Westmoreland	1	111,059	.89
District 29 Caroline Hanover King William Essex King and Queen Middlesex Gloucester Mathews	1	85,776	1.16
District 30 Newport News York	1	135,245	.73

[fol. 463]

## VIRGINIA

## SENATE

1960

5

UnitRepresentativesPopulation/RepresentativeIndexDistrict 31  
Hampton

1

89,258

1.11

District 32  
Charles City  
Chesterfield  
James City  
New Kent  
Colonial Heights  
Williamsburg

1

109,151

.91

District 33  
Richmond City

2

109,979

.90

District 34  
Henrico

1

117,339

.85

District 35  
Roanoke City

1

97,110

1.02

District 36  
Alexandria

1

91,023

1.09

[fol. 464]

## VIRGINIA

## HOUSE OF DELEGATES

1960

39,112

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 1 Accomack	1	30,635	1.29 (45)
District 2 Accomack Northampton	1	47,601	.83 (16)
District 3 Albemarle Greene	1	35,684	1.11 (3)
District 4 Charlottesville	1	29,427	1.35
District 5 Alexandria	2	45,511	.87 (18)
District 6 Alleghany Covington Clifton Forge	1	28,458	1.39
District 7 Amelia Powhatan Nottoway	1	29,703	1.34
District 8 Amherst Lynchburg	1	77,743	.51
District 9 Arlington	3	54,467	.73 (11)
District 10 Augusta Highland Staunton Waynesboro	2	39,255	1.01 (29)
District 11 Bedford	1	31,028	1.28 (44)

[fol. 465]

## VIRGINIA

## HOUSE OF DELEGATES

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 12 Bland Giles	1	23,201	1.71
District 13 Botetourt Craig Roanoke County	1	81,764	.49
District 14 Brunswick Lunenburg	1	30,302	1.31 (46)
District 15 Buchanan	1	36,724	1.08 (33)
District 16 Russell Dickenson	1	46,501	.85 (17)
District 17 Buckingham Appomattox Cumberland	1	26,385	1.50
District 18 Campbell	1	32,958	1.20 (41)
District 19 Caroline King George Essex King and Queen	1	32,547	1.22 (41)
District 20 Carroll Floyd	1	33,640	1.18 (39)
District 21 Charles City James City New Kent York Williamsburg	1	49,950	.79 (14)

[fol. 466]

## VIRGINIA

## HOUSE OF DELEGATES

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 22 Charlotte Prince Edward	1	27,489	1.44
District 23 Chesterfield Colonial Heights	1	80,784	.49 (L)
District 24 Clarke Frederick Winchester	1	44,993	.88 (19)
District 25 Danville	1	46,577	.85 (17)
District 26 Hampton	1	89,258	.44 (3)
District 27 Fairfax County Falls Church Fairfax City	3	95,064	.42 (E)
District 28 Fauquier Rappahannock	1	29,434	1.35
District 29 Fluvanna Goochland Louisa	1	29,392	1.35
District 30 Franklin	1	25,925	1.53
District 31 Gloucester Mathews Middlesex	1	25,359	1.56
District 32 Grayson Galax	1	22,644	1.75

[fol. 467]

## VIRGINIA

## HOUSE OF DELEGATES

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 33 Greensville Sussex	1	28,566	1.39
District 34 Halifax South Boston	1	39,611	1.00 (77)
District 35 Hanover King William	1	35,113	1.13 (8)
District 36 Henrico	1	117,339	.34 (1)
District 37 Henry Patrick Martinsville	2	37,207	1.07 (30)
District 38 Isle of Wight Nansemond Suffolk	1	61,139	.65 (8)
District 39 Northumberland Westmoreland Lancaster Richmond County	1	36,776	1.08 (32)
District 40 Newport News	3	37,887	1.05 (29)
District 41 Lee Wise Norton	2	37,208	1.07 (31)
District 42 Loudoun	1	24,549	1.62
District 43 Lynchburg	1	54,790	.72 (10)

[fol. 468]

VIRGINIA

HOUSE OF DELEGATES

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 44 Madison Culpeper Orange	1	36,175	1.10 (34)
District 45 Mecklenburg	1	31,428	1.26 (42)
District 46 Montgomery Radford	1	42,294	.94 (25)
District 47 Nansemond Suffolk	1	43,975	.90 (23)
District 48 Nelson Amherst	1	35,705	1.11 (36)
District 49 Norfolk County, South Norfolk	2	36,823	1.08 (34)
District 50 Norfolk City	6	50,812	.78 (12)
District 51 Page Warren	1	30,227	1.31 (46)
District 52 Petersburg Dinwiddie	2	29,466	1.35
District 53 Pittsylvania	2	29,148	1.36
District 54 Portsmouth	2	57,386	.69 (9)
District 55 Prince George Surry Hopewell	1	44,385	.89 (64)

[Vol. 469]

469

## VIRGINIA

## HOUSE OF DELEGATES

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 56 Princess Anne Virginia Beach	2	42,609	.93 (13)
District 57 Prince William	1	50,164	.79 (13)
District 58 Pulaski	1	27,258	1.46
District 59 Richmond City Henrico	8	42,162	.94 (24)
District 60 Roanoke County	1	61,693	.64 ( )
District 61 Roanoke City	2	48,555	.82 (15)
District 62 Rockbridge Bath Buena Vista	1	35,674	1.11 (31)
District 63 Rockingham Harrisonburg	2	26,200	1.51
District 64 Shenandoah	1	21,825	1.82
District 65 Smyth	1	31,066	1.28 (23)
District 66 Southampton Franklin City	1	27,195	1.46
District 67 Spotsylvania Stafford Fredericksburg	1	44,334	.89 (14)

[fol. 470]

## VIRGINIA

## HOUSE OF DELEGATES

1960

<u>Unit</u>	<u>Representatives</u>	<u>Population/Representative</u>	<u>Index</u>
District 68 Tazewell	1	44,791	.89 (22)
District 69 Washington Scott Bristol	2	40,516	.98 (26)
District 70 Wythe	1	21,975	1.81

[fol. 471]

Office-Supreme Court, U.S.  
FILED

FEB 7 1963

JOHN F. DAVIS, CLERK

In the  
**Supreme Court of the United States**  
October Term, 1962

No. ~~77-1~~ 69

LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v.

HARRISON MANN, ET AL.,

*Appellees.*

**STATEMENT OF JURISDICTION**

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February 7, 1963

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In the  
**Supreme Court of the United States**  
October Term, 1962

\_\_\_\_\_  
No. \_\_\_\_\_  
\_\_\_\_\_

LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v.

HARRISON MANN, ET AL.,

*Appellees.*

\_\_\_\_\_  
**STATEMENT OF JURISDICTION**  
\_\_\_\_\_

I.

**OPINION OF THE COURT BELOW**

The opinion of the three-judge United States District Court for the Eastern District of Virginia, at Alexandria, is reported at ..... F. Supp. .... (1962) as *Mann v. Davis* and is found, together with the dissenting opinion, as Appendix I to this statement.

II.

**THE JURISDICTION OF THE COURT**

1. The case below was brought by the appellees seeking  
(a) a judgment declaring Sections 24-12 and 24-14 of the

Code of Virginia, as amended (the Apportionment Acts of 1962), unconstitutional and void, (b) an injunction restraining the appellants from conducting elections under these sections and (c) an apportionment by the court below if the General Assembly of Virginia should fail, after an injunctive decree, to reapportion the State in conformity with legal standards. A three-judge court was convened pursuant to 28 U. S. C. Sections 2281 and 2284 and jurisdiction was invoked under 28 U. S. C. Section 1343(3). This appeal is taken from the judgment of the three-judge court declaring the two state statutes to be unconstitutional and enjoining the enforcement thereof. The statute pursuant to which this appeal is brought is 28 U. S. C. Section 1253.

2. The date and time of entry of the judgment sought to be reviewed by this appeal is November 28, 1962. The notice of appeal was filed in the United States District Court for the Eastern District of Virginia, at Alexandria, on December 10, 1962.

3. Section 1253 of Title 28, U. S. C. confers on this Court jurisdiction of this appeal and reads as follows:

"Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." (June 25, 1948, c. 646, 62 Stat. 926).

4. The following cases sustain the jurisdiction of this Court:

- (a) *St. John v. Wisconsin Employment Relations Board*, 340 U. S. 411, 414 (1951);
- (b) *Palmetto Fire Insurance Co. v. Conn*, 272 U. S. 295, 305 (1920); and
- (c) *Harrison v. N.A.A.C.P.*, 360 U. S. 167 (1959).

5. The validity of two state statutes is involved. Chapter 635, Acts of the General Assembly of Virginia, 1962, p. 1266, codified as Section 24-14 of the Code of Virginia, as amended, 1962 Cumulative Supplement, Volume 5, pp. 137, 138, divided the state into thirty-six (36) senatorial districts. Chapter 638, Acts of the General Assembly of Virginia, 1962, p. 1269, codified as Section 24-12 of the Code of Virginia, as amended, 1962 Cumulative Supplement, Volume 5, pp. 135, 136, 137, created seventy (70) house districts and distributed and apportioned the one hundred (100) members of the House of Delegates throughout such districts for purposes of representation. Due to the length of these statutes they are not here set out verbatim. Their text is set forth as Appendix II to this statement.

### III.

#### THE QUESTIONS PRESENTED

1. Should the court below have declined to entertain jurisdiction in this case in the exercise of its discretion conformably with the doctrine of abstention?
2. Did the court below err in declaring and adjudging that Chapters 635 and 638, Acts of the General Assembly of Virginia, 1962, denied the appellees and those persons similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States?

4

IV.

**STATEMENT OF THE CASE**

As previously mentioned, this case was heard before a statutory three-judge court on the complaints of the appellees seeking declaratory judgments and permanent injunctions against the enforcement and operation of certain statutes enacted by the General Assembly of Virginia.

The original and intervening plaintiffs below are registered and qualified voters of the Commonwealth of Virginia residing, respectively, in Arlington County, Fairfax County and the City of Norfolk. The appellants are the Secretary of the State Board of Elections, the members thereof, and various local elections officials of Arlington County, Fairfax County, and the City of Norfolk, Virginia.

As pointed out, the judgment of the court below, attached as Appendix III of this statement, declared Sections 24-12 and 24-14 of the Code of Virginia, as amended, to be unconstitutional and void. The appellants were also restrained and enjoined from proceeding under or pursuant to the said sections, but the enforcement of the injunction was stayed until January 31, 1963, so that (1) the General Assembly of Virginia could be called and convened in special session "to enact appropriate reapportionment statutes under the Constitution of Virginia and the Constitution of the United States" or so that (2) during the said suspension the appellants might appeal to this Court for review.

Upon the application of the appellants, the execution and enforcement of the judgment of the court below was stayed pending the perfection of this appeal and the final disposition of such appeal by this Court, pursuant to the order of the Chief Justice entered on December 15, 1962.

The only evidence introduced by the appellees in the court below, which might be considered material, dealt with popu-

lation figures. It may be summarized by quoting from the opinion of the majority below:

### "THE SENATE

"The disparities in the Senate found in the 1962 apportionment acts are pointed up by the plaintiffs' evidence as follows:

"A citizen of Arlington, Fairfax, or Norfolk has representation or voting power in the Senate of *less* than  $\frac{1}{2}$  of that possessed by a citizen of any of 6 of the 33 remaining districts in the State. Putting it conversely, his voting power is more than 2-times the voting power of any of the plaintiffs. Further, in 5 more of the districts the power of each vote is *almost twice* that of any plaintiff on an average. Thus  $\frac{1}{3}$  of the other 33 senatorial districts are nearly 100% richer in each vote's worth than are the plaintiffs' districts.

"In substantiation of this summary the plaintiffs offered in evidence these figures:

"Virginia's 1960 population is 3,966,949. Dividing this total by the number of Senators—40—gives an ideal representation of one Senator for each 99,174 persons.

	<u>Arlington</u>	<u>Fairfax</u>	<u>City of Norfolk</u>
"Population	163,401	285,194	304,869
No. of Senators	1	2	2
Population per Senator	163,401	142,597	152,435

<u>District</u>	<u>Population</u>	<u>No. of Senators</u>	<u>Population Per Senator</u>
Brunswick			
Lunenburg			
Mecklenburg	61,730	1	61,730

<u>District</u>	<u>Population</u>	<u>No. of Senators</u>	<u>Population Per Senator</u>
Goochland Louisa Orange Spotsylvania City of Fredericksburg	62,523	1	62,523
Culpeper Fauquier Loudoun	63,703	1	63,703
Clarke Frederick Shenandoah City of Winchester	66,818	1	66,818
Halifax Charlotte Prince Edward City of South Boston	67,100	1	67,100
Dickenson Wise City of Norton	68,803	1	68,803
Bland Giles Pulaski Wythe	72,434	1	72,434
Greensville Prince George Surry Sussex Hopewell	72,951	1	72,951
Norfolk County City of South			

<u>District</u>	<u>Delegates</u>	<u>Population</u>	<u>Population Per Delegate</u>
Norfolk (Now City of Chesapeake)	73,647	1	73,647
Dinwiddie Nottoway City of Petersburg	74,074	1	74,074
Appomattox Buckingham Cumberland Powhatan Amherst Nelson Amelia	76,652	1	76,652

Total: 11 districts

### "HOUSE OF DELEGATES

"In the House plaintiffs contend that a vote in Fairfax has less than  $\frac{1}{4}$  of the voting force of a vote in 4 districts;  $\frac{1}{3}$ —or less than that—of a vote in at least 16 others; and thus the preferred districts amount to a total of 20 of the other 67 districts in the State. In addition, both Norfolk and Arlington have almost double the individual vote-weight of Fairfax; but these two have only approximately  $\frac{1}{2}$  the ballot-potency of 7 districts. The following figures have been adduced to vouch the contention.

"With the State population at 3,966,949 each of the 100 Delegates would presumably represent 39,669 persons.

	<u>Arlington</u>	<u>Fairfax</u>	<u>City of Norfolk</u>
"Population	163,401	285,194	304,869
No. of Delegates	3	3	6
Population per Delegate	54,467	95,064	50,812

<u>District</u>	<u>Delegates</u>	<u>Population</u>	<u>Population Per Delegate</u>
Shenandoah	1	21,825	21,825
Wythe	1	21,975	21,975
Grayson	1	22,644	22,644
Bland	1	23,201	23,201
Loudoun	1	24,549	24,549
Gloucester	1	25,359	25,359
Franklin	1	25,925	25,925
Rockingham	2	52,401	26,200
Buckingham	1	26,385	26,385
Southampton	1	27,195	27,195
Pulaski	1	27,258	27,258
Charlotte	1	27,489	27,489
Alleghany	1	28,458	28,458
Greensville	1	28,566	28,566
Pittsylvania	2	58,296	29,148
Fluvanna	1	29,392	29,392
City of Charlottesville	1	29,427	29,427
Fauquier	1	29,434	29,434
City of Petersburg	2	58,933	29,466
Amelia	1	29,703	29,703

Total: 20 districts"

The appellants introduced twelve (12) exhibits in the court below. They may be summarized as follows:

1. Defendants' Exhibit No. 1, which is the annual report of the Virginia Alcoholic Beverage Control Board, shows, beginning on page 48, the number of incorporated towns located in the various counties of Virginia.

2. Defendants' Exhibit No. 2, a letter of Mr. Richard M. Scammon, Director of the Bureau of Census, dated September 26, 1962, certified that the number of males 14 years and over in the labor force reported as in the armed

forces as of April 1, 1960, for the county of Arlington, Virginia, was 10,628.

3. Defendants' Exhibit No. 3 shows the population of each State according to the 1960 census, the number of electors allotted to each State and the population per elector based upon the 1960 census. The smallest population per elector exists in Alaska, with 88,722 inhabitants per elector; the largest population per elector exists in California with 392,930 inhabitants per elector. In several other states, i.e., Florida, Illinois, Indiana, Massachusetts, Michigan, Pennsylvania and Texas, the population variance per elector as compared to Alaska is substantially as great as that which exists between California and Alaska.

4. Defendants' Exhibit No. 4 contains apportionment data of New York State as shown by the opinion of the three-judge District Court in *W.M.C.A., Inc. v. Simon*, 208 F. Supp. 368. This data shows the population variance ratio between the largest and smallest Senate and Assembly districts in New York based upon population. The largest Senate district has a population of 666,784; the smallest Senate district had a population of 168,398—a population variance ratio of approximately 3.96 to 1. The largest Assembly district had a population of 222,261; the smallest Assembly district had a population of 15,044—a population variance ratio of approximately 14.1 to 1.

5. Defendants' Exhibits Nos. 5 and 6 show the rank order of Virginia in comparison with other States, based upon population, before and after the 1962 reapportionment statutes were enacted by the General Assembly of Virginia. *These exhibits were prepared by the Bureau of Public Administration of the University of Virginia and Exhibit No. 5 established that Virginia ranks eighth in the United States*

*in fair representation, based solely on population, subsequent to the 1962 reapportionment legislation.*

6. Defendants' Exhibits Nos. 7, 8, 9 and 10 compare rural and urban representation in the Senate and House of Delegates of Virginia and establish that no discrimination exists in favor of rural areas as against urban areas.

7. Defendants' Exhibits No. 11, United States Census of Population, 1960 (Virginia) gives the total military personnel in Virginia at page 48-395. Table 115 (page 48-403) indicates that the number of persons fourteen years of age and over residing in Fairfax County and in the armed forces of the United States totals 16,693.

8. Defendants' Exhibit No. 12 is a statement made by the Governor of Virginia when he signed the 1962 reapportionment statutes of Virginia, now codified as Sections 24-12 and 24-14 of the Virginia Code.

## V.

### THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The three-judge court below decided questions of such substantial nature as to require plenary consideration by this Court, with briefs on the merits and oral argument, for their resolution for the following reasons:

## A.

**The Court Below Should Have Declined to Entertain Jurisdiction in This Case in the Exercise of Its Discretion Conformably With the Doctrine of Abstention.**

The doctrine of equitable abstention is involved here and it is only necessary to examine the majority and minority

opinions of the court below to conclude that a substantial question is raised by this appeal. The decision of the majority would appear to be clearly in conflict with many decisions of this Court and with decisions of federal district courts.

It is conceded that the appellees have an appropriate and adequate remedy in the state courts of Virginia. *Brown v. Saunders*, 159 Va. 28, 166 S. E. 105 (1932) and *Baker v. Carr*, 369 U. S. 186 (1962). It must also be conceded that this case involves an area which vitally affects the independence of state governments, for without Sections 24-12 and 24-14 of the Code of Virginia, as amended, the Commonwealth of Virginia could not function. Under such circumstances, the doctrine of equitable abstention must be applied, or discarded as a time-honored principle of equity. Yet, the majority of the court below held that "abstention is not appropriate here." Its only authority was *Baker v. Carr*, *supra*, as interpreted in *Toombs v. Fortson*, 205 F. Supp. 248 (N. D. Ga., 1962).

*Baker v. Carr* did not hold that abstention is not appropriate in apportionment cases. As Mr. Justice Stewart, in his concurring opinion, emphasized (369 U. S. 265):

"The Court today decides three things and no more: (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) \* \* \* that the appellants have standing to challenge the Tennessee apportionment statutes.' \* \* \*." See also, 369 U. S. 197-198.

The majority below, in holding that the doctrine of abstention should not be applied in apportionment cases, also ignored such decisions (and the facts and circumstances surrounding them) as *Remmey v. Smith* (D. C. E. D., Penn., 1951), 102 F. Supp. 708, app. dism. 342 U. S. 916;

*Lein v. Sathre* (D. C. N. D. S. W. Div., Jan. 29, 1962), 201 F. Supp. 535 and (May 31, 1962) 205 F. Supp. 536; *Lisco v. McNichols* (D. C. Col., Aug. 10, 1962), 208 F. Supp. 471; *Wisconsin v. Zimmerman* (D. C. W. D. Wis., Aug. 14, 1962), 209 F. Supp. 183; and *League of Nebraska Municipalities v. Marsh* (D. C. Neb., July 20, 1962), 209 F. Supp. 189.

The facts and circumstances surrounding this case are entirely different from those involved in apportionment decisions handed down since *Baker v. Carr*, *supra*.

1. The General Assembly of Virginia has faithfully followed the mandate to reapportion found in section 43 of the Virginia Constitution of 1902, as amended.<sup>1</sup>

2. The appellees have an adequate remedy in the courts of this state. *Brown v. Saunders*, *supra*.

3. The courts of this state have not refused to consider the relief requested by the appellees.

4. Section 43 of the Virginia Constitution<sup>2</sup> has not been

<sup>1</sup> Since 1900 the House of Delegates has been reapportioned by the following acts: Acts of 1906, p. 84; Acts of 1910, p. 9; Acts of 1922, p. 463; Acts of 1923, p. 17; Acts of 1932, p. 337; Acts of 1942, chapt. 387; Acts of 1948, p. 803; Acts of 1952, Ex. Sess., chapt. 18; Acts of 1958, chapt. 33; and Acts of 1962, chapt. 638.

Since 1900 the Senate of Virginia has been reapportioned by the following acts: Acts of 1901-2, p. 800; Acts of 1922, p. 463; Acts of 1923, p. 17; Acts of 1934, p. 252; Acts of 1942, chapt. 387; Acts of 1948, p. 805; Acts of 1952, Ex. Sess., chapt. 17; Acts of 1958, chapt. 333; and Acts of 1962, chapt. 635.

<sup>2</sup> The provision of the Virginia Constitution pursuant to which §§ 24-12 and 24-14 of the Code of Virginia, as amended, were enacted reads:

"§43. Apportionment of Commonwealth into senatorial and house districts. The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

construed by the state courts and construction thereof is vital to a final determination of the issue presented by the appellees.

5. A serious federal constitutional question may be avoided by invoking the doctrine of abstention in this case.

Without doubt, the facts and circumstances set forth above required the majority below, in the exercise of discretion, to abstain from hearing this case on its merits. The decisions of this Court support this position. *Pennsylvania v. Williams*, 294 U. S. 176 (1935); *Railroad Commission v. Pullman Co.*, 312 U. S. 496 (1941); *Stainback v. Mo Hock Ke Lok Po*, 336 U. S. 368 (1949); *Government & C.E.O.C., CIO v. Windsor*, 353 U. S. 364 (1957); *Harrison v. N.A.A.C.P.*, 360 U. S. 167 (1959); *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25 (1959); and *Martin v. Creasy*, 360 U. S. 219 (1962). Compare, *Alleghany v. Mashuda*, 360 U. S. 185 (1959).

As a matter of law, few public interests have a higher claim upon the discretion of a federal chancellor than avoidance of needless friction between state and federal governments and avoidance of federal constitutional questions which may become unnecessary to consider because of state judicial construction. Consistent with these fully precedented principles, the doctrine of abstention should have been applied by the majority below.

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Compare, § 55 of the Constitution of Virginia which requires the congressional districts to be "composed of contiguous and compact territory containing as nearly as practicable, an equal number of inhabitants."

## B.

**The Reapportionment Statutes of Virginia Do Not Deny Equal Protection of the Laws in Contravention of the Fourteenth Amendment of the Constitution of the United States.**

The majority of the court below found "unconstitutional, invidious discrimination" adverse to Arlington, Fairfax and the City of Norfolk. It was held that the appellees had proved inequities on the basis of population and that the appellants had not carried the burden of adducing evidence which might explain such inequities. By this holding, the majority not only ignored the evidence introduced by the appellants in the court below, but also refused to apply the principle, long established by this Court, that "a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 366 U. S. 420, 426 (1961); and *Baker v. Carr*, *supra*.

**MILITARY PERSONNEL**

The constitutions of such states as Washington, Wisconsin and South Dakota provide that military personnel should be excluded from the population figures used to determine apportionment of the state legislatures. See, 17 Law and Contemporary Problems, p. 366 and 43 Mich. L. Rev. 1091 et seq.

Section 24 of the Constitution of Virginia provides that "no officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to right of suffrage in the State, or in any county, city or town thereof, by reason of being stationed therein; . . ."

Evidence on behalf of defendants established that the total male military personnel residing in Arlington County

was 10,628. Of course, many men in the armed forces are married and have children and, while it is a question of judgment, it is surely reasonable to multiply the number of males by  $2\frac{1}{2}$  to obtain a total figure for military personnel, their wives and children residing in Arlington County. It was legally permissible for the General Assembly of Virginia, in considering reapportionment, to exclude military personnel, their wives and children located in Arlington County. Multiplication of the figure 10,628 by the figure  $2\frac{1}{2}$  produces a total of 26,570. The 1960 census for Arlington County shows a population of 163,401. Subtracting the former figure from the latter leaves the figure of 136,831 as the correct population of Arlington County to be considered for apportionment purposes.

Using the population figures as adjusted above, the correct population for Arlington County per Senator (Arlington County has one Senator) is 136,831. Under the 1962 reapportionment act, Arlington has three delegates, and dividing a total population of 136,831 by three gives a population of 45,610 per delegate, as opposed to 54,467 inhabitants per delegate as found by the majority below. These figures compare favorably with the "ideal representation" figures of one Senator for each 99,174 persons and one Delegate for each 39,669 persons. This is especially true when one considers that Arlington County is an extremely small, densely populated county, having an area of only twenty-four square miles (less than half the size of the city of Norfolk), and that elected representatives of Arlington County represent only one political subdivision (the county itself) which contains only one governing body, one school board and one set of constitutional officers.

Similar adjustment of the population figures of Fairfax County to exclude military personnel indicates that Fairfax County would have 115,471 persons per Senator and 76,980

persons per Delegate, rather than 142,597 persons per Senator and 95,064 persons per Delegate as set forth in the majority opinion. These figures also compare favorably to the "ideal representation" figures when one considers that the district comprising Fairfax County, Fairfax City and the City of Falls Church has an area of only 407 square miles, while other districts which are less heavily populated have areas ranging up to 2776 square miles.

Similar adjustment of the population figures for the City of Norfolk to exclude military personnel indicates that Norfolk has 93,148 persons per Senator and 31,049 persons per Delegate. Thus, with military personnel excluded, *Norfolk is actually over-represented in both the Senate and House of Delegates on a strict population basis.*

If the 1960 census figures are adjusted for military personnel, their wives and children, the variance in population between the areas in which appellees reside and other areas of the State is considerably reduced. Was the majority of the court below justified in ignoring these adjusted figures when it found "invidious discrimination" to exist with respect to the inhabitants of Arlington County, Fairfax County and the City of Norfolk? Appellants submit that this question, which lies at the very heart of this case, is a substantial federal question which should be considered by this Court.

#### REPRESENTATION IN THE ELECTORAL COLLEGE

Defendants' Exhibit No. 3 indicates that, in the Electoral College, the smallest population per elector exists in the State of Alaska which has 88,722 inhabitants per elector, while the largest population per elector exists in California which has 392,930 inhabitants per elector—a population variance ratio of 4.4 to 1 as between California and Alaska.

Based solely upon population, *including military personnel, their wives and children*, the most excessive population variance ratio in the House of Delegates of Virginia is 4.36 to 1, while the most excessive variance ratio in the Senate of Virginia is 2.65 to 1. Thus, it is clear that, even including military personnel, no population variance ratio in either the House of Delegates or Senate of Virginia exceeds the population variance ratio which exists in the Electoral College. Can individious discrimination exist in a State apportionment system which contains no population variance ratio which exceeds that of the Electoral College? Appellants submit that this is a substantial federal question which should be considered by this Court.

#### CONFLICT WITH OTHER DECISIONS

In the landmark opinion in *Baker v. Carr*, *supra*, the individual members of this Court stressed various aspects of that case which serve to distinguish it completely from the case at bar. Speaking for the Court, Mr. Justice Brennan pointed out that "Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties subject only to minor qualifications," that between 1901 and 1961 there had been no decennial reapportionment in compliance with the constitutional scheme even though Tennessee had experienced "substantial growth and redistribution of her population" and that the substance of the appellant's claim was that the existing (1901) reapportionment statute manifested an "irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population." *Id.* at 189-192, 207. *No such situation exists in the case at bar.*

Commenting upon the "gross disproportion" of representation mentioned above, Mr. Justice Douglas noted the assertion that "a single vote in Moore County, Tennessee, is worth 19 votes in Hamilton County, that one vote in Stewart or in Chester County is worth eight times a single vote in Shelby or Knox County." *Id.* at 249. *No comparable situation exists or is alleged to exist in the case at bar.*

With respect to the operation of the Tennessee reapportionment statute as applied to rural and urban areas of the State, Mr. Justice Clark observed that the statute "discriminates horizontally creating gross disparities between rural areas themselves as well as between urban areas themselves, still maintaining the wide vertical disparity already pointed out between rural and urban." *Id.* at 256. He also emphasized the "frequency and magnitude of the inequalities" in the Tennessee districting and the circumstance that the people of Tennessee would be "saddled with the present discrimination in the affairs of their State government" in the absence of federal judicial intervention. *Id.* at 259. *No such situation exists or is alleged to exist in the case at bar.*

Finally, Mr. Justice Stewart reasserted the well established principles governing consideration of cases in which the validity of a State statute is challenged under the Equal Protection Clause of the Fourteenth Amendment, pointing out that "the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others" and that "the burden of establishing the unconstitutionality of a statute rests on him who assails it." *Id.* at 266. As previously noted in this statement, no proper application of these principles to the extensive evidence marshaled by the defendants was made, *or even attempted*, by the majority of the court below.

In *W. M. C. A., Inc. v. Simon, supra*, currently pending before this Court on appeal (No. 460, October Term, 1962), a three-judge District Court for the Southern District of New York sustained *on the merits* the validity of the reapportionment scheme embodied in the New York Constitution. Under New York law, every county in the State (with the exception of Hamilton County which shares one Assemblyman with Fulton County) is entitled to one representative in the New York Assembly. Senate districts for representation are created on the basis of citizen population, excluding aliens, with certain limitations upon the number of Senators any county may have.

Under this redistricting system, the largest New York Assembly district in population contained 222,261 inhabitants, and the smallest Assembly district in population contained 15,044 inhabitants—a population variance ratio of 14.7 to 1 between these districts. By contrast, the most excessive population variance ratio in the Virginia reapportionment system with respect to the House of Delegates is 4.36 to 1, based upon population figures *which include military personnel, their wives and children*.

Similarly, the largest Senate district in New York based on population contains 666,784 inhabitants, while the smallest Senate district in New York based on population contains 168,390 inhabitants—a population variance ratio of 3.96 to 1. By contrast, the most excessive population variance ratio under the Virginia reapportionment system with respect to the Senate of Virginia is 2.65 to 1, based upon population figures which again *include military personnel, their wives and children*.

The New York redistricting provisions were sustained by a unanimous court in a decision which, we submit, is thoroughly in accord with the settled course of decisions of this Court from *MacDougall v. Green*, 335 U. S. 281, to

*Baker v. Carr, supra.* Yet, the Virginia reapportionment system was annulled in its entirety by a divided court, the majority of which did not even mention the New York case, despite the presence of an exhibit compiled by the Bureau of Public Administration of the University of Virginia analyzing the New York system in detail.

In *Sobel v. Adams*, 208 F. Supp. 316, a three-judge District Court for the Southern District of Florida, sustained *on the merits* the validity of the reapportionment scheme embodied in certain proposed amendments to the Florida Constitution to be submitted to the people for ratification. Under the proposed amendments, each county in Florida would be given one representative in the House of Representatives of the State Legislature, the remaining members to be allocated on the basis of representative ratios. The Senate would consist of forty-six members, each representing a district. Each of the twenty-four most populous counties in the State would constitute a Senate district, the other twenty-two districts to be created from the remaining forty-three counties.

Under this redistricting system, the largest population per representative in the Florida House of Representatives was 62,336, while the smallest population per representative in any district was 2,868—a population variance ratio of 21.7 to 1 between such districts. In Virginia, as previously pointed out, the most excessive population variance ratio with respect to the Virginia House of Delegates is 4.36 to 1. Similarly, the largest Senate district in Florida based on population contained 935,047 inhabitants, while the smallest Senate district in Florida contained 14,971 inhabitants—a population variance ratio of 62.4 to 1 between such Senate districts. In Virginia, as previously pointed out, the most excessive population variance ratio in the Senate of Virginia is 2.65 to 1.

Although the proposed amendments to the Florida Constitution were not adopted, the three-judge District Court, pointing out that it could not be said that the proposed amendments reached apportionment equality on a strict basis of population, unanimously sustained the reapportionment scheme contemplated by the proposed amendments.

Can it possibly be the law that a State reapportionment system which gives rise to extreme population variance ratios of 14.7 to 1 (New York) or 62.4 to 1 (Florida) are *not* invidiously discriminatory under the Fourteenth Amendment, but a State reapportionment system which gives rise to an extreme population variance ratio of only 4.36 to 1 (Virginia) is invidiously discriminatory? Can it possibly be the law that a State reapportionment system which causes a State to rank 13th in the United States in fairness of representation based *solely* on population (New York) is *not* invidiously discriminatory, but a State reapportionment system which causes a State to rank 8th in the United States in fairness of representation based *solely* on population is invidiously discriminatory? If such is the law, the decisions of the federal courts in reapportionment cases will themselves become a "topsy-turvical of gigantic proportions" and, in the absence of judicial guidelines enunciated by this Court to avoid such a result, those decisions will surely create a judicial "crazy quilt without rational basis." *Baker v. Carr*, *supra*, at 254. Appellants respectfully submit that the above-stated inquiries constitute substantial federal questions which should be considered by this Court.

#### VIRGINIA'S OVERALL REAPPORTIONMENT PICTURE

In his opinion in the court below—post Appendix I—the dissenting judge canvassed the situation which has obtained with respect to reapportionment in Virginia and noted (1)

that Virginia—unlike the legislatures of many states—has consistently reapportioned its senatorial and house districts decennially in accordance with the mandate of Section 43 of the Virginia Constitution; (2) that other districts which may have been disadvantaged by the 1962 reapportionment “have not seen fit to attack the constitutionality” of the statutes in controversy; and (3) that if additional representatives were awarded to Fairfax, Arlington and Norfolk, such representatives “must be taken from other areas” and the court “would undoubtedly be faced with further litigation” by other districts.

Thereafter, the dissenting judge made the following pertinent observations and inquiries:

“In my judgment the decision of the majority *places too much emphasis* upon the weighted vote of one county, city, or district as contrasted with the weighted vote in another county, city or district.

\* \* \*

“Granting relief at this time without sufficient guidepost to govern our action *establishes a dangerous precedent*.

\* \* \*

“... the mere failure to disprove discrimination by population does not, in my opinion, establish ‘invidious’ discrimination *when Virginia’s overall picture is reviewed*.

\* \* \*

“Virginia stands eighth in the nation in an index of representativeness among state legislatures as prepared by the Bureau of Public Administration of the University of Virginia subsequent to the passage of the 1962 Act. More proportionate representation is available only in Oregon, Massachusetts, New Hampshire, West Virginia, Maine, Wisconsin and Alaska. In determining whether the 1962 Reapportionment Act constituted ‘arbitrary and capricious state action’ or, as described

by the majority, 'invidious' discrimination, *are we to look at the entire pattern of apportionment or should we only consider apportionment of one district as against another? These are, in my judgment, unanswered questions.*" (Italics supplied).

In what manner should the Virginia reapportionment picture be viewed? In the event of a reapportionment which cures the discrimination found by the majority to exist with respect to Arlington, Fairfax and Norfolk, what are the rights of citizens of other areas to institute subsequent independent suits alleging invidious discrimination with respect to the districts in which they reside? If such additional suits may be instituted, then—as the dissenting judge of the court below inquired—"where is the stopping point" in reapportionment litigation? Counsel for appellants submit that the questions found by the dissenting judge to be unanswered by the majority opinion are substantially federal questions which should be considered by this Court.

### CONCLUSION

In *Baker v. Carr*, *supra*, this Court held that the plaintiffs had set out in their complaint a justiciable cause of action which they had standing to maintain and the District Court had jurisdiction to hear. Individual members of this Court also reaffirmed various underlying principles applicable to litigation of this character in the following language:

"The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' . . . Universal equality is not the test; there is room for weighting. (Id. at 244-245).

"No one . . . contends that mathematical equality among voters is required by the Equal Protection Clause. (Id. at 258).  
\* \* \*

"Although I find the Tennessee apportionment statute offends the Equal Protection Clause, I would not consider intervention by this Court into so delicate a field if there were any other relief available to the people of Tennessee. (Id. at 258).  
\* \* \*

"Moreover, there is no requirement that any plan have mathematical exactness in its application. Only where, as here, the total picture reveals incommensurables of both magnitude and frequency can it be said that there is present an invidious discrimination. (Id. at 260).  
\* \* \*

"In *MacDougall v Green*, 335 US 281, 93 L ed 3, 69 S Ct 1, the court held that the Equal Protection Clause does not 'deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.' " (Id. at 265-266).

In the *MacDougall* case, *supra*, at 283, this Court also emphasized:

"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government."

Against the background of these first principles the significant features of the case at bar stand out in bold relief:

1. The General Assembly of Virginia has consistently reapportioned the Commonwealth decennially in

accordance with the mandate of Section 43 of the Virginia Constitution.

2. Complete relief is available to the plaintiffs in the Supreme Court of Appeals of Virginia. In 1932, that Court (a) invalidated an enactment of the General Assembly of Virginia which failed to reapportion the Commonwealth for congressional representation according to population as required by Section 55 of the Virginia Constitution and (b) directed congressional elections for that year to be conducted on an "at large" basis.

3. The only discrimination alleged or attempted to be established by plaintiffs in the case at bar is one "exclusively of numbers" based solely on certain variances in population between districts. No suggestion is made that the challenged statutes discriminate against any individual, group or district upon the basis of race, creed, national origin, political persuasion or rural-urban character.

4. *Based solely on population*, Virginia ranks 8th in the United States in fairness of representation subsequent to the enactment of the challenged statutes. No reapportionment suit has been successfully maintained in any State having a higher rank on this index, while reapportionment systems of States having lower rank on such index have been judicially approved.

5. The most excessive population variance ratio in Virginia, *based solely on population*, does not exceed that which exists in the Electoral College of the United States.

6. The majority opinion of the court below made no reference to any factor other than population figures,

and gave no consideration to the factors of military personnel, relative size of various districts, number of political subdivisions in various districts or density of population in various districts.

When these significant features are viewed in the light of the "settled principles" applicable to litigation of this character, counsel for appellants submit that the substantial federal questions presented by this appeal should be accorded plenary consideration by this Court, with briefs on the merits and oral argument.

Respectfully submitted,

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### PROOF OF SERVICE

I, R. D. McIlwaine, III, one of the attorneys for the appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 7th day of February, 1963, I served copies of the foregoing

Statement of Jurisdiction on the several appellees hereto by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: Edmund D. Campbell, Esquire, Southern Building, Washington, D. C.; E. A. Prichard, Esquire, 106 N. Payne Street, Fairfax, Virginia; Sidney H. Kelsey, Esquire, 1408 Maritime Tower, Norfolk, Virginia; Henry E. Howell, Jr., Esquire, 808 Maritime Tower, Norfolk, Virginia; and Leonard B. Sachs, Esquire, Citizens Bank Building, Norfolk, Virginia.

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*Assistant Attorney General*

## APPENDIX I

### OPINIONS OF THE COURT BELOW

#### Majority Opinion

ALBERT V. BRYAN, Circuit Judge:

Virginia's legislative apportionment statutes\* of 1962 are here assailed as violative of the Equal Protection Clause of the Federal Constitution's Fourteenth Amendment. Plaintiffs (including intervenors) are registered and otherwise qualified voters of the State of Virginia residing, respectively, in Arlington County, Fairfax County and the City of Norfolk. Their complaint is that the apportionment reduces the value of a vote in these districts far below that of a vote in many other Senatorial and House Districts of Virginia. The charge, we hold, has been proved.

The civil rights statutes, 42 U.S.C. §§ 1983 and 1988, are pleaded as authorizing the action; jurisdiction is rested on 28 U.S.C. § 1343(3). Alleging they sue on behalf of all other voters similarly situated in the Commonwealth of Virginia, as well as for themselves, plaintiffs name as defendants the members of the State Board of Elections and local election officials, together with the Governor and the Attorney General of Virginia.

The relief sought is (1) a judgment voiding the apportionment acts, (2) injunctive restraint of the defendants from conducting elections under these laws, and (3) an apportionment by the Court if the General Assembly fail,

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\*Chap. 635, 1962 Acts of Assembly, p. 1266, entitled "An Act to amend and reenact § 24-14, as amended, of the Code of Virginia, relating to State senatorial districts," and Chap. 638, p. 1269, entitled "An Act to amend and reenact § 24-12, as amended, of the Code of Virginia, relating to apportionment of the members of the House of Delegates," both approved April 7, 1962.

after the decree of injunction, to reapportion the State in conformity with legal standards.

I. Defendants move on several grounds to dismiss the complaint.<sup>1</sup> However, *Baker v. Carr*, 369 U. S. 186 (1962) unequivocally declares, contrary to the first assertion of the motion, that allegations comparable to those now before us state a claim upon which the relief here-prayed may be granted. Nor is dismissal justified on the further ground that the plaintiffs have an appropriate remedy in the Virginia courts, for the "exceptional circumstances" are not here for the State remedy to oust Federal jurisdiction, *Lane v. Wilson*, 307 U. S. 268, 274 (1939); *United States v. Bureau of Revenue*, 291 F. 2d 677, 679 (10 Cir. 1961); *Carson v. Warlick*, 238 F. 2d 724, 729 (4 Cir. 1956), cert. denied, 353 U. S. 910 (1957). Nor is this a suit against a State barred by the Eleventh Amendment, as defendants contend. It is a suit against State officials acting pursuant to State laws, a type of action universally held appropriate to vindicate a Federally protected right. *Ex parte Young*, 209 U. S. 123, 155-56 (1908). *Duckworth v. James*, 267 F. 2d 224, 230-31 (4 Cir.), cert. denied, 361 U. S. 835 (1959); *Kansas City So. Ry. v. Daniel*, 180 F. 2d 910, 914 (5 Cir. 1950). Likewise contrary to the motion, we find the complaint pleads a class action; it pleads, too, an actual controversy within the Declaratory Judgment Act, 28 U.S.C. §2201. We sustain, however, the motion to dismiss the Governor and the Attorney General of Virginia as defendants, for they have no "special relation" to the elections in suit. *Ex parte Young*, 209 U. S. 123, 157 (1908).

The remaining ground of the motion asks us to stay the case until the plaintiffs procure the State courts' views upon the validity of the apportionment. But in our understanding of it abstention is not appropriate here. To begin with,

there is no ambiguity in the statutes; they are not in need of interpretation, for they exactly fix and announce the representation of the General Assembly districts. Nor are the Virginia Constitution's provisions, which sired the acts and are quoted in a moment, lacking in clarity. These provisions, argue the defendants, purposely do not outline the criteria by which the apportionment is to be made and advisedly leave the standards to the judgment of the General Assembly. This suggests, defense counsel urge, that Virginia's own courts should first pass upon the composition of the districts, for they are presumably more intimately acquainted with the local conditions doubtlessly weighed by the General Assembly in the passage of the acts. The answer is that there is nothing in the State Constitution referring the General Assembly to any specific local considerations peculiarly within its knowledge. Whether the acts of the Assembly are within the aim and purpose of the Constitution can, therefore, be gained only from the bare words of its clauses, fair inferences from the acts themselves and commentary evidence. This determination is thus as well within the competence of a Federal court sitting in Virginia.

Furthermore, the strong implication of *Baker v. Carr*, if not its command, is that the Federal three-judge court should retain and resolve the litigation. The decision was so read by the Court in *Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga. 1962). Nothing different can be spelled from *Scholle v. Hare*, 369 U. S. 429 (1962). That case was sent back to the State court because it had its origin there, not because the Supreme Court preferred the State court. We find no precedent for abstention in the circumstances of our case.

II. The sections of the Virginia Constitution in suit are these:

"§40. General Assembly to consist of Senate and House of Delegates.—The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Delegates.

"§41. Number and election of senators.—The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.

"§42. Number and election of delegates.—The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts, on the Tuesday succeeding the first Monday in November.

"§43. Apportionment of Commonwealth into senatorial and house districts.—The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

The 1962 acts of the General Assembly established 36 senatorial districts, assigning them 40 Senators, and 70 districts for the House of Delegates, distributing 100 members among them. The only ground-rule in the State Constitution for the placement of Senators and Delegates is contained, as we have seen, in its section 43's references to "apportionment of the Commonwealth into senatorial and house districts" and subsequent "reapportionment." These, obviously, are broad dimensions. *Brown v. Saunders*, 159 Va. 28, 166 S. E. 105, 107 (1932).

Nevertheless, the Equal Protection Clause of the Four-

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teenth Amendment, as the plaintiffs rightly stress, demands that this apportionment accord the citizens of the State substantially equal representation. Plaintiffs charge that the 1962 statutes so far transgress this mandate of the Federal Constitution as to inflict "invidious discrimination" upon the plaintiffs. The injury is suffered, they aver, through their under-representation in the General Assembly occasioned by the misapportionment of Senators and Delegates—their votes have been diluted because the ratio of their population to the number of their representatives is far greater than in the other districts delineated by the acts.

### The Senate

The disparities in the Senate found in the 1962 apportionment acts are pointed up by the plaintiffs' evidence as follows:

A citizen of Arlington, Fairfax, or Norfolk has representation or voting power in the Senate of *less* than  $\frac{1}{2}$  of that possessed by a citizen of any of 6 of the 33 remaining districts in the State. Putting it conversely, his voting power is more than 2-times the voting power of any of the plaintiffs. Further, in 5 more of the districts the power of each vote is *almost twice* that of any plaintiff on an average. Thus  $\frac{1}{3}$  of the other 33 senatorial districts are nearly 100% richer in each vote's worth than are the plaintiffs' districts.

In substantiation of this summary the plaintiffs offered in evidence these figures:

Virginia's 1960 population is 3,966,949. Dividing this total by the number of Senators—40—gives an ideal representation of one senator for each 99,174 persons.

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	<u>Arlington</u>	<u>Fairfax</u>	<u>City of Norfolk</u>
Population	163,401	285,194	304,869
No. of Senators	1	2	2
Population per Senator	163,401	142,597	152,435

<u>District</u>	<u>Population</u>	<u>No. of Senators</u>	<u>Population Per Senator</u>
Brunswick			
Lunenburg			
Mecklenburg	61,730	1	61,730
Goochland			
Louisa			
Orange			
Spotsylvania			
City of Fredericksburg	62,523	1	62,523
Culpeper			
Fauquier			
Loudoun	63,703	1	63,703
Clarke			
Frederick			
Shenandoah			
City of Winchester	66,818	1	66,818
Halifax			
Charlotte			
Prince Edward			
City of South Boston	67,100	1	67,100
Dickenson			
Wise			
City of Norton	68,803	1	68,803

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<u>District</u>	<u>Population</u>	<u>No. of Senators</u>	<u>Population Per Senator</u>
Bland			
Giles			
Pulaski			
Wythe	72,434	1	72,434
Greensville			
Prince George			
Surry			
Sussex			
Hopewell	72,951	1	72,951
Norfolk County			
City of South			
Norfolk (now City of Chesapeake)	73,647	1	73,647
Dinwiddie			
Nottoway			
City of			
Petersburg	74,074	1	74,074
Appomattox			
Buckingham			
Cumberland			
Powhatan			
Amherst			
Nelson			
Amelia	76,652	1	76,652
<hr/>			
Total: 11 districts			

House of Delegates

In the House plaintiffs contend that a vote in Fairfax has less than  $\frac{1}{4}$  of the voting force of a vote in 4 districts;

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$\frac{1}{3}$ —or less than that—of a vote in at least 16 others; and thus the preferred districts amount to a total of 20 of the other 67 districts in the State. In addition, both Norfolk and Arlington have almost double the individual vote-weight of Fairfax; but these two have only approximately  $\frac{1}{2}$  the ballot-potency of 7 districts. The following figures have been adduced to vouch the contention.

With the State population at 3,966,949 each of the 100 Delegates would presumably represent 39,669 persons.

	<u>Arlington</u>	<u>Fairfax</u>	<u>City of Norfolk</u>
Population	163,401	285,194	304,869
No. of Delegates	3	3	6
Population per Delegate	54,467	95,064	50,812

<u>District</u>	<u>Delegates</u>	<u>Population</u>	<u>Population Per Delegate</u>
Shenandoah	1	21,825	21,825
Wythe	1	21,975	21,975
Grayson	1	22,644	22,644
Bland	1	23,201	23,201
Loudoun	1	24,549	24,549
Gloucester	1	25,359	25,359
Franklin	1	25,925	25,925
Rockingham	2	52,401	26,200
Buckingham	1	26,385	26,385
Southampton	1	27,195	27,195
Pulaski	1	27,258	27,258
Charlotte	1	27,489	27,489
Alleghany	1	28,458	28,458
Greensville	1	28,566	28,566
Pittsylvania	2	58,296	29,148
Fluvanna	1	29,392	29,392

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<u>District</u>	<u>Delegates</u>	<u>Population</u>	<u>Population Per Delegate</u>
City of			
Charlottesville	1	29,427	29,427
Fauquier	1	29,434	29,434
City of Petersburg	2	58,933	29,466
Amelia	1	29,703	29,703

Total: 20 districts

NOTE: In all the foregoing tabulations the population figures are 1960 census. Unless otherwise indicated the political subdivisions listed are counties. They include all cities and towns within the county boundaries, such as the cities of Falls Church and Fairfax in Fairfax County. We are concerned with both relative representation and relative voting power as between the districts. No distinction need be observed because, obviously, the number of local voters would not exceed local populations.

III. The next question is whether this inequality amounts to the invidious discrimination that is held to be unconstitutional. *Williamson v. Lee Optical Co.*, 348 U. S. 483, 489 (1955). True, the imbalance in the districts here appears only in population. While predominant, population is not in our opinion the sole or definitive measure of districts when taken by the Equal Protection Clause. Compactness and contiguity of the territory, community of interests of the people, observance of natural lines, and conformity to historical divisions, such as county lines for example, are all to be noticed in assaying the justness of the apportionment. Additionally, of course, we must accept as established such reasons for the districting as are fairly conceivable or inferable in and from the result. *McGowan v. Maryland*, 366 U. S. 420, 426 (1961).

Plaintiffs here proved the inequity of the allotment of representatives on the basis of population. Thereupon the burden to adduce evidence of the presence of other factors which might explain this disproportion passed to the defendants. But none was forthcoming, if indeed it was available. In an attempt to account for the unevenness, defendants adverted to the large segment in Arlington, Fairfax and Norfolk of military or naval personnel, urging that the General Assembly might have deducted their number in determining the popular count in these areas. But this evidence was not explicit or at all satisfactory. Furthermore, it was hardly helpful for it was conceded that Service men and women could, and many of them do, qualify to vote.

There is little doubt that in Virginia population is the overriding consideration in any distribution of representatives. As the Governor of Virginia stated April 7, 1962, in respect to the reapportionment legislation, "Historically, population has been utilized as the principal factor in redistricting in Virginia, although population alone has never been deemed the sole basis of redistricting." Exactitude in population is not demanded by the Equal Protection Clause. But there must be a fair approach to equality unless it be shown that other acceptable factors may make up for the differences in the numbers of people. In view of the accent Virginia has put upon population, the very words in her Constitution—"apportionment" and "reapportionment"—seem to envision popular equality. The Oxford English Dictionary (1933 ed.), volumes I and VIII, contains these definitions:

"Apportion:

"1. . . .

- "2. To assign portions or shares; to divide and assign proportionally. . . .

"Proportional:

- "1. . . .  
 "2. That is in proportion, or in due proportion; having (suitable) comparative relation; *corresponding, esp. in degree or amount.*" (Emphasis added.)

In this consideration there is no difference in status between the Senators and Delegates in their disposition throughout the State. The Senate and the House each have a direct, indeed the same, relation to the people. No analogy of the State Senate with the Federal Senate in the present study is sound. The latter is a body representative of the States qua States, but the State Senate is not its regional counterpart. State senatorial districts do not have State autonomy. The bicameral system is a creature of history and many of the reasons for its creation no longer obtain. The chief justification for bicameralism in State government now seems to be the thought that it insures against precipitate action — imposing greater deliberation — upon proposed legislation. See I Bryce, *The American Commonwealth*, 484 (1917 Ed.); Maddox & Fuquay, *State and Local Government*, 130 ff (1962); Macdonald, *American State Government and Administration*, 116 (6th Ed. 1960); Snider, *American State and Local Government*, 161 ff (1950); compare Sikes & Stoner, *Bates & Field's State Government*, 176. (4th Ed. 1954).

Indulging all of the reasonable inferences which may be fairly drawn from the redistricting, we can find no rational basis for the disfavoring of Arlington, Fairfax and Norfolk. No acceptable formula, plan or design is shown us to

account for the disparate divisions of the State. We do not mean to establish an allowable tolerance of divergence from the ideal district—whether more or less than a specified per centum. Nor do we intend to say that there cannot be wide differences of population in districts if a sound reason can be advanced for the discrepancies. We merely say none is offered here.

Unconstitutional, invidious discrimination adverse to Arlington, Fairfax and Norfolk has been proved. The inequality in the representation and voting rights occasioned Arlington, Fairfax and Norfolk is a grave deprivation, constitutionally impermissible. That there may be other districts also disadvantaged by the reapportionment has not been overlooked.\* But these additional deviations do not prove the apportionment right or make the plaintiffs whole. Furthermore, as we annul the acts in their entirety, the General Assembly can hereafter reexamine and reappraise the circumstances of any other prejudiced district.

IV. We will enter a judgment declaring the invalidity of the acts. It will also enjoin the defendants from proceeding under this legislation. Prior apportionment statutes have been repealed by the 1962 acts, the defendants concede, and they agree to; there is no possibility here of the revival of prior apportionment statutes.

However, our preference has been, and still is, for the General Assembly of Virginia to square the injustices of the 1962 Acts. But the circumstances did not permit defer-

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\* Such as, for example, these *Senate Districts*: (1) Accomack, Northampton, Princess Anne, Virginia Beach; (2) Franklin, Montgomery, Radford, Roanoke; and (3) Newport News, York; and these *House Districts*: (1) Botetourt, Roanoke, Craig; (2) Chesterfield, Colonial Heights; (3) Hampton City; and (4) Portsmouth City.

ment of the determination of this suit until the next regular session of the Legislature, which convenes in January 1964. To begin with, the Senators elected in 1963 would not take office until January 1964 and would serve until January 1968. Similarly, Delegates chosen in 1963 would enter in January 1964 and be in office until January 1966. The disproportionate representations could not be righted by the 1964 General Assembly prior to 1966 in the case of Delegates, and not until 1968 as to the Senators, for there would not be another House election before 1965 and none for the Senate prior to 1967. This delay would be unreasonable.

Nor can we now defer until the 1964 General Assembly the effectuation of our decision. Aside from the reasons just enumerated for the inadvisability of initially continuing the case, to do so now would be to allow the elections scheduled for 1963 to proceed under statutes we have found invalid. However, the present General Assembly may without question take the necessary corrective measures to readjust the district lines.

To achieve these ends, we will stay the operation of the injunction until January 31, 1963, so that the present General Assembly may be convened in special session to enact appropriate reapportionment laws, or the defendants may appeal to the United States Supreme Court. Meanwhile jurisdiction of the cause will be retained, but any further stay of the injunction must be sought from the Supreme Court or one of its Justices. If neither of the steps just mentioned is taken or, if taken, does not result either in meeting or altering our decision, then the plaintiffs may apply to this court for such further orders as may be required.

An order will be entered in accordance with this opinion.

(s) Albert V. Bryan  
United States Circuit Judge

I concur:

(s) Orin R. Lewis  
United States District Judge

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### Dissenting Opinion

HOFFMAN, District Judge, dissenting:

With deference and respect to my learned colleagues, I must dissent.

In 1931 the late Mr. Justice Holmes, speaking for the Court in *Bain Peanut Co. v. Pinson*, 282 U. S. 499, 501, said:

"We must remember that the machinery of government would not work if it were not allowed a little play in its joints."

Unlike the legislatures of many states, Virginia has reapportioned the senatorial and house districts in accordance with the mandate of Sec. 43 of the Virginia Constitution, i.e., in the year 1932 and every ten years thereafter. Admittedly the task of reapportionment is a difficult one and, while discrimination is now apparent when considered in the light of population alone, I am unwilling at this moment to say that it is "invidious." Nor am I able to conclude in law and in fact that Virginia's 1962 Reapportionment Act constitutes "arbitrary and capricious state action" offensive

to the Equal Protection Clause of the Fourteenth Amendment in the absence of further guidance from the highest court of our nation or state. In my judgment the decision of the majority places too much emphasis upon the weighted vote of one county, city, or district as contrasted with the weighted vote in another county, city or district.

The landmark decision in *Baker v. Carr*, 369 U. S. 186, was handed down on March 26, 1962. The opinion of the Court, written by Mr. Justice Brennan, consumes 55 pages. Separate concurring opinions by Mr. Justice Douglas, Mr. Justice Clark, and Mr. Justice Stewart require 25 pages. Dissenting opinions by Mr. Justice Frankfurter and Mr. Justice Harlan are contained within 83 pages. It is indeed difficult for judges and attorneys to fully understand the impact of *Baker v. Carr*—to say nothing of legislators upon whom the primary responsibility of reapportionment rests.

The General Assembly of Virginia convened in regular session during January, 1962. It meets every two years. While the specific Acts, now held to be unconstitutional by the majority, were not approved by the Governor until April 7, 1962, the General Assembly had ceased transacting its legislative business several weeks prior thereto. Thus, when *Baker v. Carr* was decided, the General Assembly was no longer in session. The Governor, in approving H.B. 250 and S.B. 145, took cognizance of the decision but concluded that "the recent Tennessee case need not be cause for alarm in Virginia." While I cannot agree that the entire matter may be dismissed so summarily, I am of the opinion that the federal court should abstain in order to permit the removal of the existing disparities on the state level.

This is not to suggest that the General Assembly has not already had an opportunity to correct defects in apportionment at the 1962 regular session. The Report of the Com-

mission on Redistricting made substantial progress in adjusting the inequities; but the General Assembly did not see fit to follow this report other than in two or three instances. However that may be, the General Assembly was not confronted with *Baker v. Carr*, and the subsequent decisions at that time. At a later date more mature consideration would undoubtedly bring about adjustments.

Plainly there is not complete unanimity of opinion in *Baker v. Carr*. As Mr. Justice Stewart said in his concurring opinion (369 U. S. 186):

"The Court today decides three things and no more: (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) \* \* \* that the appellants have standing to challenge the Tennessee apportionment statutes."

\* \* \*

"Contrary to the suggestion of my Brother Harlan, the Court does not say or imply that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter' \* \* \* The Court does not say or imply that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.' \* \* \* And contrary to the suggestion of my Brother Douglas, the Court most assuredly does not decide the question, 'may a State weight the vote of one county or district more heavily than it weights the vote in another?'"

The effect of today's decision will open the floodgates to litigation which may be continuous. The majority acknowledges that "there may be other districts also disadvantaged by the reapportionment." Indeed there are although, as yet,

they have not seen fit to attack the constitutionality of the Acts in controversy. Accepting the premise that an ideal representation of one Senator is 99,174 persons, and conceding that there are 11 senatorial districts which are rather obviously over-represented, where is the stopping point?

By way of illustration:

<u>District</u>	<u>Population</u>	<u>No. of Senators</u>	<u>Population per Senator</u>
Accomack			
Northampton			
Princess Anne			
Virginia Beach	131,816	1	131,816
Franklin County			
Montgomery			
Radford			
Roanoke County	129,912	1	129,912
Newport News			
York County	135,245	1	135,245

The foregoing compare somewhat favorably with the population per Senator in Fairfax which is 142,597, and which is designated as comprising Fairfax County, Fairfax City and Falls Church. The Senate disparity in the City of Norfolk (152,435) and County of Arlington (163,401) is, of course, greater.

Turning to the House of Delegates we find the ideal representation per Delegate to be 39,669 persons. As pointed out by the majority, there are 20 districts which are favored and which vary from "the ideal" by at least 25%. There are likewise districts, which, along with the plaintiffs herein, are subjected to disparity. For example:

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<u>District</u>	<u>Delegates</u>	<u>Population</u>	<u>Population per Delegate</u>
Botetourt			
Roanoke County			
Craig	1	81,764	81,764
Chesterfield			
Colonial Heights	1	80,784	80,784
Hampton	1	89,258	89,258
Portsmouth	2	114,773	57,386

No attempt has been made to cite the Delegate disparity in certain other districts, apparently under-represented, but which are included in more than one district under the 1962 Act. They are:

Amherst and Lynchburg  
 Henrico  
 Isle of Wight, Nansemond and Suffolk  
 Lynchburg  
 Roanoke County

It is sufficient to note, however, that the following districts have more cause to complain as to disparity in the House of Delegates than either Arlington or Norfolk, two of the three plaintiffs in this action:

Botetourt, Craig and Roanoke County  
 Chesterfield and Colonial Heights  
 Hampton  
 Portsmouth

The interlocutory order to be entered in this case will afford Virginia two alternatives — appeal to the United

States Supreme Court or the convening of an extra session of the General Assembly. If the extra session is convened the appeal will be moot. Assuming, *arguendo* that later reapportionment takes care of the needs of Fairfax, Arlington and Norfolk, the additional representatives must be taken from other areas. We would undoubtedly be faced with further litigation as to any county, city or district where the deviation is beyond 25% of the ideal. Granting relief at this time without sufficient guideposts to govern our action establishes a dangerous precedent.

For all practical purposes this case is decided upon the exhibits and the testimony of a representative of the Bureau of Public Administration, an agency of the University of Virginia. In the report of the Bureau to the Governor's Commission on Redistricting, dated July 10, 1961, it is said:

*"It is recommended that the deviation from the ideal size be as little as possible, with most deviations within 15 per cent of ideal size, and exceptions in the most difficult situations within 25 per cent. It is indeed difficult, if not impossible, to justify deviations beyond 25 per cent."*

I have no quarrel with the author of that statement—it may be correct—but before approving or disapproving it is my view that a three-judge federal court should be fortified with more authoritative statements as to what constitutes "invidious" discrimination or "arbitrary and capricious state action." Admittedly the population has—and will in the future—be the predominant factor in determining equality of representation. The majority concludes that the plaintiffs have proved the inequity of the allotment of representatives on the basis of population *alone*. I agree. While the burden of going forward with the evidence may then pass

to the defendants, the mere failure to disprove discrimination by population does not, in my opinion, establish "invidious" discrimination when Virginia's overall picture is reviewed. It should be remembered that every intendment must be resolved in favor of constitutionality and the burden of showing unconstitutionality is on those who assail it. *McGowan v. Maryland*, 366 U. S. 420, 425-426; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584; *Toombs v. Fortson*, 205 F. Supp. 248, 256. Proof of discrimination is not, standing alone, sufficient.

While the constitutional requirements of the State of New York differ from those in Virginia, it is significant that a three-judge federal court in New York recently upheld the apportionment of the Senate and Assembly districts in *W. M. C. A., Inc. v. Simon*, 208 F. Supp. 368, where the weighted vote demonstrates a far greater disparity than that which exists in Virginia.

In summary, I view the decision of the majority as, at the very least, intimating that proof of disparity in population is all that is needed. It is contrary to what was said in *MacDaugall v. Green*, 335 U. S. 281, 283:

"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government."

In the exercise of our dicretionary power as a court of equity and in the public interest, I would retain jurisdiction of this case pending appropriate action in the state courts of Virginia. *Pennsylvania v. Williams*, 294 U. S. 176. This is true even though the rights asserted are strictly federal in origin. *Hawks v. Hammill*, 288 U. S. 52. I can visualize no more delicate a field for the federal courts to refrain

from entering, especially where the overall representativeness is as great as in Virginia.

Virginia stands eighth in the nation in an index of representativeness among state legislatures as prepared by the Bureau of Public Administration of the University of Virginia subsequent to the passage of the 1962 Act. More proportionate representation is available only in Oregon, Massachusetts, New Hampshire, West Virginia, Maine, Wisconsin and Alaska. In determining whether the 1962 Reapportionment Act constitutes "arbitrary and capricious state action" or, as described by the majority, "invidious" discrimination, are we to look at the entire pattern of apportionment or should we only consider apportionment of one district as against another? These are, in my judgment, unanswered questions.

One must look to the background of *Baker v. Carr* in order to arrive at the reason for the conclusion reached by the United States Supreme Court. Tennessee's Constitution provided a standard for allocating legislative representation among the several counties or districts according to the total number of qualified voters residing in the respective counties. Decennial reapportionment was likewise required. For a period of 60 years since 1901, all proposals for reapportionment were defeated in both Houses of the General Assembly. There was no provision for initiative and referendum. The constitutional convention route was thwarted by the Assembly where the call must originate. Of particular significance is the fact that the voters endeavored to proceed in the Tennessee Courts without success. These efforts, among others, caused Mr. Justice Clark to say (369 U. S. 259):

"I have searched diligently for other 'practical oppor-

tunities' present under the law. I find none other than through the federal courts."

It was as a last resort that Mr. Justice Clark would "consider intervention by this Court into so delicate a field." Simply stated there was no other relief available to the people of Tennessee.

That state courts are open to voters seeking reapportionment rights under the Equal Protection Clause of the Fourteenth Amendment and Civil Rights Act is plain. *Scholle v. Hare*, 369 U. S. 429, where the origin of the litigation was in the state court; *Brown v. Saunders*, 159 Va. 28, 166 S. E. 105, where the Supreme Court of Appeals of Virginia, held the Acts of Assembly, 1932, to be void by reason of a division of the state into congressional districts as being in conflict with Section 55 of the Constitution of Virginia. And in *Lein v. Sathre*, 201 F. Supp. 535, a three-judge federal court in North Dakota stayed proceedings to afford an opportunity to the Supreme Court of North Dakota to pass upon questions arising under the North Dakota reapportionment provisions contained in its Constitution. As early as 1951, a three-judge federal court in Pennsylvania, *Remmcy v. Smith*, 102 F. Supp. 708, 711, app. dism. 342 U. S. 916, speaking through Circuit Judge Biggs, stated in an action to declare an apportionment act unconstitutional:

"The determination which the plaintiffs would have us make lies in that extremely sensitive field, the relation of the powers of the National Government to those of the States. Here, of all places, a federal court should tread warily and with great circumspection and should forego any action where relief may be furnished by the State. This court should not intervene where an apparent, but untried, remedy may lie in the Courts of the Commonwealth of Pennsylvania."

I agree that there is no ambiguity in the particular statutes under consideration and they are not in need of interpretation *per se*. As construed in conjunction with Sections 41, 42 and 43 of the Virginia Constitution, a state court determination will, at the very least, furnish a guide for future action. I cannot agree that we should disregard the doctrine of abstention merely because the subject matter of the inquiry lies within the competence of a federal court sitting in Virginia; nor do I believe that ambiguity and need for interpretation constitute the only basis for resorting to abstention. There are numerous cases where abstention has been sanctioned on grounds of comity with the States in order to avoid a result in "needless friction with State policies." *Railroad Com. v. Pullman Co.*, 312 U. S. 496; *Pennsylvania v. Williams*, *supra*. That the United States Supreme Court favors the doctrine of abstention is apparent from its more recent decisions. *Harrison v. NAACP*, 360 U. S. 167; *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25; *Martin v. Creasy*, 360 U. S. 219. Of the four cases decided on June 8, 1959, involving the doctrine of abstention, only in *County of Alleghany v. Mashuda Co.*, 360 U. S. 185, did the Supreme Court reject abstention and the initial paragraph of the opinion pointedly suggests that the case "*would not entail the possibility of a premature and perhaps unnecessary decision of a serious federal constitutional question; would not create the hazard of unsettling some delicate balance in the area of federal-state relationships, and would not even require the District Court to guess at the resolution of uncertain and difficult issues of state law.*"

Since *Baker v. Carr* there have been only two cases, from which it appears that the doctrine of abstention was affirmatively raised; where the court declined to abstain. In *Toombs*

v. *Fortson*, 205 F. Supp. 248, a three-judge federal court in Georgia elected to dispose of the entire case without "leaving part of it in limbo pending a later decision by a State Court." Such is not this case. I do not agree with that portion of the opinion in *Toombs v. Fortson* which intimates that *Baker v. Carr* has held that the doctrine of abstention should be ignored in apportionment cases. Likewise in *Sanders v. Gray*, 203 F. Supp. 158, a three-judge federal court in Georgia, composed of two of the three judges sitting in *Toombs*, held that there was no adequate state remedy in view of the holding of the Supreme Court of Georgia in *Cox v. Peters* (Ga. 1951), 67 S. E. (2d) 579.

Unlike *Lisco v. McNichols*, 208 F. Supp. 471, where the General Assembly of Colorado had repeatedly refused to apportion in accordance with the Colorado Constitution, Virginia has reapportioned at ten year intervals as required by the bare wording of her Constitution. To prevent a multitude of actions which will undoubtedly result following any hasty reapportionment at any extra session of the General Assembly of Virginia, the entire matter may be resolved by retaining jurisdiction and relegating the parties to the state court for a decision under Virginia's Declaratory Judgment Act.

Wisconsin, a state which claims greater proportionate representativeness than Virginia, has been involved in recent apportionment litigation. *Wisconsin v. Zimmerman*, ..... F. Supp. ...., decided August 14, 1962. Expressing a reluctance to enter orders or directives in such a case, the three-judge federal court dismissed the action without prejudice to the rights of plaintiffs to again file suit after August 1, 1963. The Court noted that a great disparity in population did exist, although not comparable with Tennessee. The action by the federal court in Wisconsin was

taken despite the fact that (1) the Wisconsin Supreme Court "had again denied relief," (2) the 1961 legislature did not comply with the requirements of the state constitution, (3) the 1962 special session did nothing to afford relief, and (4) the next session of the legislature would not convene until January, 1963.

We are told that the element of time compels us to act. It is quite true that candidates for the House and Senate must announce their intention by April 15, 1963, if their names are to be considered in any primary election next July. Unless a candidate elects to proceed by way of mandamus in the Supreme Court of Appeals of Virginia—as was done in *Brown v. Saunders*, supra—it is a foregone conclusion that a proceeding under the Virginia Declaratory Judgment Act would not reach the highest court of the State until after the 1963 general election. At that time members of the House and Senate would be elected under the 1962 Reapportionment Act. If the regular session of the General Assembly failed to take appropriate action, the state court, or federal court if necessary, could then act. If the 1962 Act is unconstitutional, there is no security of office afforded to the members of the General Assembly. They would, of course, remain as a legislative body for the purpose of doing what the majority opinion now compels them to do in the absence of an appeal.

If they fail to adhere to their constitutional duty, the 1962 Act does not become constitutional by mere inaction. When we balance the equities, it is certainly more appropriate to permit the General Assembly of Virginia to maturely consider the vital issue of voter representation in the light of *Baker v. Carr* and subsequent decisions, rather than to force hasty action which has been known to bring about the enactment of obviously unconstitutional measures. While

I would favor the doctrine of abstention to permit the state court to initially determine the questions at hand, as a final alternative I would continue this case until thirty days following the adjournment of the next regular or extra session of the General Assembly of Virginia.

In the event the defendants do not see fit to appeal from the order to be entered pursuant to the majority opinion, and if the General Assembly is not convened in extra session by the Governor, the only alternative will be for this Court to reapportion the State in conformity with legal standards. While I agree that this may be done where the legislature fails to act, it would undoubtedly result in the adoption of Plan "A" (with minor exceptions) which is substantially a mathematical computation according to population, with a maximum deviation of twenty-four per cent. Certainly this Court has nothing else upon which to base its action. When we consider other states, such as New York, Maryland and Hawaii, where the concentration of population is in one major city, it may be inappropriate to rely so heavily upon population. With the trend of population in Virginia toward urban development, the voting power in this State may soon be vested in the cities. It may benefit Virginia as a whole, but this decision should rest with its elected representatives and not with a federal court.

A new approach created by new decisions should give rise to action with "deliberate speed" in protecting constitutional rights of those who are subjected to discrimination, but it does not necessarily mean that such discrimination must be corrected forthwith.

APPENDIX II

THE STATUTES INVOLVED

Chapter 635, Acts of Assembly of Virginia, 1962, page 1266, codified as §24-14 of the Code of Virginia (1950), as amended, 1962 Cumulative Supplement, Volume 5, pages 137, 138, reads as follows:

Be it enacted by the General Assembly of Virginia:

1. That §24-14, as amended, of the Code of Virginia, be amended and reenacted as follows:

§24-14. The State is hereby divided into thirty-six districts entitled to senators as follows:

First.—The counties of Accomack, Northampton, Princess Anne and the city of Virginia Beach, one.

Second.—Norfolk city, two.

Third.—Norfolk county and the city of South Norfolk, one.

Fourth.—The counties of Halifax, Charlotte and Prince Edward and the city of South Boston, one.

Fifth.—The counties of Isle of Wight, Nansemond, Southampton and the cities of Suffolk and Franklin, one.

Sixth.—The counties of Greenville, Prince George, Surry and Sussex and the city of Hopewell, one.

Seventh.—The counties of Brunswick, Lunenburg and Mecklenburg, one.

Eighth.—The counties of Dinwiddie, Nottoway and the city of Petersburg, one.

Ninth.—Arlington county, one.

Tenth.—City of Portsmouth, one.

Eleventh.—The counties of Appomattox, Buckingham, Cumberland, Powhatan, Amherst, Nelson and Amelia, one.

Twelfth.—Campbell county and city of Lynchburg, one.

Thirteenth.—The counties of Henry, Patrick and Pittsylvania and cities of Danville and Martinsville, two.

Fourteenth.—The counties of Smyth, Carroll, Floyd, Grayson and the city of Galax, one.

Fifteenth.—The counties of Washington, Lee and Scott and the city of Bristol, one.

Sixteenth.—The counties of Dickenson and Wise and the city of Norton, one.

Seventeenth.—The counties of Buchanan, Russell and Tazewell, one.

Eighteenth.—The counties of Bland, Giles, Pulaski and Wythe, one.

Nineteenth.—The counties of Alleghany, Bedford, Botetourt, Craig and Rockbridge, and the cities of Buena Vista, Clifton Forge, and Covington, one.

Twentieth.—The counties of Franklin, Montgomery, and Roanoke, and the city of Radford, one.

Twenty-first.—The counties of Augusta, Bath, and Highland, and the cities of Staunton and Waynesboro, one.

Twenty-second.—The counties of Page, Rappahannock, Rockingham and Warren, and the city of Harrisonburg, one.

Twenty-third.—The counties of Clarke, Frederick, Shenandoah and the city of Winchester, one.

Twenty-fourth.—The counties of Albemarle, Fluvanna, Greene and Madison, and the city of Charlottesville, one.

Twenty-fifth.—The counties of Goochland, Louisa, Orange and Spotsylvania, and the city of Fredericksburg, one.

Twenty-sixth.—The counties of Culpeper, Fauquier and Loudoun, one.

Twenty-seventh.—The county of Fairfax and the cities of Fairfax and Falls Church, two.

Twenty-eighth.—The counties of King George, Lancaster, Northumberland, Prince William, Richmond, Stafford and Westmoreland, one.

Twenty-ninth.—The counties of Caroline, Hanover, King William, Essex, King and Queen, Middlesex, Gloucester and Mathews, one.

Thirtieth.—City of Newport News and county of York, one.

Thirty-first.—City of Hampton, one.

Thirty-second.—The counties of Charles City, Chesterfield, James City and New Kent and the cities of Colonial Heights and Williamsburg, one.

Thirty-third.—Richmond city, two.

Thirty-fourth.—County of Henrico, one.

Thirty-fifth.—City of Roanoke, one.

Thirty-sixth.—City of Alexandria, one.

Chapter 638, Acts of Assembly of Virginia, 1962, page 1269, codified as §24-12 of the Code of Virginia (1950), as

amended, 1962 Cumulative Supplement, Volume 5, pages 135, 136, 137, reads as follows:

Be it enacted by the General Assembly of Virginia:

1. That §24-12, as amended, of the Code of Virginia, be amended and reenacted as follows:

§24-12. Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Accomack, one.

Second.—Accomack and Northampton, one.

Third.—Albemarle and Green, one.

Fourth.—Charlottesville, one.

Fifth.—Alexandria, two.

Sixth.—Alleghany, Covington and Clifton Forge, one.

Seventh.—Amelia, Powhatan and Nottoway, one.

Eighth.—Amherst and Lynchburg, one.

Ninth.—Arlington, three.

Tenth.—Augusta, Highland, Staunton and Waynesboro, two.

Eleventh.—Bedford, one.

Twelfth.—Bland and Giles, one.

Thirteenth.—Botetourt, Craig and Roanoke County, one.

Fourteenth.—Brunswick and Lunenburg, one.

Fifteenth.—Buchanan, one.

Sixteenth.—Russell and Dickenson, one.

Seventeenth.—Buckingham, Appomattox and Cumberland, one.

Eighteenth.—Campbell, one.

Nineteenth.—Caroline, King George, Essex and King and Queen, one.

Twentieth.—Carroll and Floyd, one.

Twenty-first.—Charles City, James City, New Kent, York and Williamsburg, one.

Twenty-second.—Charlotte and Prince Edward, one.

Twenty-third.—Chesterfield and Colonial Heights, one.

Twenty-fourth.—Clarke, Frederick and Winchester, one.

Twenty-fifth.—Danville, one.

Twenty-sixth.—Hampton, one.

Twenty-seventh.—Fairfax, and cities of Fairfax and Falls Church, three.

Twenty-eighth.—Fauquier and Rappahannock, one.

Twenty-ninth.—Fluvanna, Goochland and Louisa, one.

Thirtieth.—Franklin, one.

Thirty-first.—Gloucester, Mathews and Middlesex, one.

Thirty-second.—Grayson and Galax, one.

Thirty-third.—Greensville and Sussex, one.

Thirty-fourth.—Halifax and South Boston, one.

Thirty-fifth.—Hanover and King William, one.

Thirty-sixth.—Henrico, one.

Thirty-seventh.—Henry, Patrick and Martinsville, two.

Thirty-eighth.—Isle of Wight, Nansemond and Suffolk, one.

Thirty-ninth.—Northumberland, Westmoreland, Lancaster and Richmond County, one.

Fortieth.—Newport News, three.

Forty-first.—Lee, Wise, and city of Norton, two.

Forty-second.—Loudoun one.

Forty-third.—Lynchburg, one.

Forty-fourth.—Madison, Culpeper and Orange, one.

Forty-fifth.—Mecklenburg, one.

Forty-sixth.—Montgomery and Radford, one.

Forty-seventh.—Nansemond and Suffolk, one.

Forty-eighth.—Nelson and Amherst, one.

Forty-ninth.—Norfolk county and South Norfolk, two.

Fiftieth.—Norfolk city, six.

Fifty-first.—Page and Warren, one.

Fifty-second.—Petersburg and Dinwiddie, two.

Fifty-third.—Pittsylvania, two.

Fifty-fourth.—Portsmouth, two.

Fifty-fifth.—Prince George, Surry and Hopewell, one.

Fifty-sixth.—Princess Anne and Virginia Beach, two.

Fifty-seventh.—Prince William, one.

Fifty-eighth.—Pulaski, one.

Fifty-ninth.—Richmond city, and Henrico, eight.

Sixtieth.—Roanoke County, one.

Sixty-first.—Roanoke city, two.

Sixty-second.—Rockbridge, Bath and Buena Vista, one.

Sixty-third.—Rockingham and Harrisonburg, two.

Sixty-fourth.—Shenandoah, one.

Sixty-fifth.—Smyth, one.

Sixty-sixth.—Southampton and the city of Franklin, one.

Sixty-seventh.—Spotsylvania, Stafford, and Fredericksburg, one.

Sixty-eighth.—Tazewell, one.

Sixty-ninth.—Washington, Scott and Bristol, two.

Seventieth.—Wythe, one.

And the districts hereby created are hereby numbered one (1) to seventy (70) inclusive.

The reference to a county or city in this section is to the area comprising such county or city as of January one, nineteen hundred sixty-two.

APPENDIX III

THE JUDGMENT BELOW

Interlocutory Order

Upon consideration of the complaint and the intervening petition, the motions of the defendants to dismiss, the answers of the defendants, the briefs of counsel, the evidence adduced at the hearing of this action, and the final arguments of counsel, the Court, for the reasons set forth in its opinion filed herein, ORDERS:

1. That the Governor of Virginia and the Attorney General be, and they are hereby, dismissed as parties defendant to this action;

2. That the motion of the defendants to dismiss the complaint and intervening petition be, and it is hereby, denied;

3. That the Court should, and does hereby, declare and adjudge that the acts of the General Assembly of Virginia, approved April 7, 1962, appearing as Chapter 635, page 1266, and Chapter 638, page 1269 of the 1962 Acts of the Assembly of Virginia, deny the plaintiffs and those persons similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States, and that the said acts for that reason are void and of no effect;

4. That the defendants be, and each of them is hereby, restrained and enjoined from proceeding under or pursuant to the said acts of the General Assembly of Virginia; but

5. That the enforcement of said injunction shall be stayed until January 31, 1963 so that (1) the General Assembly

of Virginia may, if the Governor of the State or the requisite number of members of the General Assembly are so advised, be called and convened in special session to enact appropriate reapportionment statutes under the Constitution of Virginia and the Constitution of the United States; or that (2) during the said suspension the defendants may appeal to the Supreme Court of the United States for a review of this order, but any further stay of this order shall be sought from the Supreme Court or a Justice thereof;

6. That if neither of the steps stated in the foregoing paragraph is taken or, if either is taken but it does not alter or meet the determination herein made, then the plaintiffs may apply to this Court for such further orders as may be required; and

7. That jurisdiction of this action be, and it is hereby, retained for the entry of such other orders as may be necessary or proper.

(s) Albert V. Bryan  
United States Circuit Judge

(s) Orin R. Lewis  
United States District Judge

I dissent:

(s) Walter E. Hoffman  
United States District Judge

November 28, 1962

**MOTION FILED FEB 13 1963**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1963**

**No. ~~68~~ 69**

---

**LEVIN NOOK DAVIS, ET AL.,**

*Appellants,*

**v.**

**HARRISON MANN, ET AL.,**

*Appellees.*

---

**MOTION OF APPELLERS MANN, STONE, WEBB AND  
DONOVAN TO VACATE STAY OR, IN THE ALTER-  
NATIVE, TO ADVANCE FOR HEARING.**

---

**EDMOND D. CAMPBELL,  
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Washington 5, D. C.**

**E. A. PRICHARD,  
Moore Building,  
Fairfax, Virginia,  
*Attorneys for Appellees,  
Mann, Stone, Webb and  
Donovan.***

---

---

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

---

No. 797

---

LEVIN NOCK DAVIS, ET AL.,

v.

HARRISON MANN, ET AL.,

*Appellants,*

*Appellees.*

---

**MOTION OF APPELLEES MANN, STONE, WEBB AND  
DONOVAN TO VACATE STAY OR, IN THE ALTER-  
NATIVE, TO ADVANCE FOR HEARING.**

Appellees, Harrison Mann, Kathryn Stone, John C. Webb and John A. K. Donovan, respectfully move the Court to vacate the temporary stay of the lower court's order heretofore granted by the Chief Justice, or in the alternative to advance this case for hearing.

The lower court found that invidious discrimination exists in the statutory apportionment of Virginia's legislative districts and refused a stay because of the impending election of a new Legislature. Party primary elections are now set by state statute for July 9, 1963; the general election for November 5, 1963. The State Senate, elected at the next general election, will serve until January, 1968; the House of Delegates until January, 1966.

If the stay is now vacated, ample opportunity exists for the State to set its own house in order by fair legislative

reapportionment through a special session of the General Assembly called for that purpose. The General Assembly could also, if necessary, extend the time for filing in, and holding the 1963 primary elections. Reapportionment legislation, if adequate, could be adopted promptly in a judicial decree, thus avoiding the effect of Section 53 of the Virginia Constitution which provides that statutes do not take effect until ninety days after adjournment unless passed by a four-fifths vote.

If the stay is soon vacated, appellees can be given relief effective in 1964. Otherwise the invidious discrimination will continue until 1968—unless, in the alternative, the case is advanced for prompt decision by this Court.

EDMUND D. CAMPBELL,  
822 Southern Building,  
Washington 5, D. C.

E. A. PRICHARD,  
Moore Building,  
Fairfax, Virginia,  
*Attorneys for Appellees,  
Mann, Stone, Webb and  
Donovan.*

### **Proof of Service**

I, EDMUND D. CAMPBELL, one of the attorneys for the appellees Mann, Stone, Webb and Donovan herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 12th day of February, 1963, I served copies of the foregoing Motion on the several appellants and appellees (intervening plaintiffs below) by

mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: The Honorable Robert Y. Button, Attorney General of Virginia, Supreme Court-State Library Building, Richmond 19, Virginia; David J. Mays, Esquire, State-Planters Bank Building, Richmond 19, Virginia; Henry E. Howell, Jr., Esquire, 808 Maritime Tower, Norfolk, Virginia, and Leonard B. Sachs, Esquire, Citizens Bank Building, Norfolk, Virginia.

EDMUND D. CAMPBELL.

(5909-7)

**LIBRARY**  
**MOTION FILED - FEB 13 1963 SUPREME COURT, U. S.**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1963**

**No. ~~111~~ 69**

---

**LEVIN NOCK DAVIS, ET AL.,**

*Appellants,*

*v.*

**HARRISON MANN, ET AL.,**

*Appellees.*

---

**MOTION AND APPLICATION TO VACATE STAY,  
FILED ON BEHALF OF APPELLEES GLANVILLE,  
SHEPHEARD, LIPKIN AND WILKINS.**

---

**HENRY E. HOWELL, JR.,**  
808 Maritime Tower,  
Norfolk 10, Virginia,  
*Attorney for Appellees,  
Glanville, Shepheard,  
Lipkin and Wilkins.*

**SIDNEY H. KELSEY,**  
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Norfolk 10, Virginia.

**LEONARD B. SACHS,**  
520 Citizens Bank Building,  
Norfolk, Virginia.  
*Of Counsel.*

---

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1962

No. 797

LEVIN NOCK DAVIS, ET AL.,

v.

HARRISON MANN, ET AL.,

*Appellants,*

*Appellees.*

**MOTION AND APPLICATION TO VACATE STAY**

Appellees, intervening petitioners below, Charles L. Glanville, William L. Shepherd, Paul M. Lipkin and Jack R. Wilkins, move and make application pursuant to Rule 35 of the Rules of the United States Supreme Court to vacate the stay granted by the Chief Justice of this Court of the relief awarded appellees by the judgment of the Three-Judge Court entered on November 28, 1962. [Appellants' Appendix 34]

**Statement of Proceedings**

Appellees herein and principal appellees are citizens and qualified voters of the State of Virginia, residing respectively in the City of Norfolk, Arlington County and Fairfax County.

A complaint and intervening petition were filed in the District Court for the Eastern District of Virginia at Alexandria, seeking to have a Three-Judge Court declare un-

constitutional the legislative apportionment statutes passed by the Virginia General Assembly in 1962 as violative of their rights guaranteed to them by the Fourteenth Amendment of the United States Constitution.

The case was heard on October 22 and 23, 1962. At this trial the Office of the Attorney General failed to produce a single witness, legislator or otherwise, to certify as to the rationale of the apportionment statutes under attack.

On November 28, 1962, Circuit Judge Albert V. Bryan handed down the majority opinion [Appellants' Appendix 1] declaring the subject statutes unconstitutional, and entered a decree enjoining the holding of elections pursuant to the unconstitutional acts, by affording the General Assembly until January 31, 1963, to meet and effect a fair and equitable reapportionment act.

The court below stayed the enforcement of its injunction until January 31, 1963, but refused a stay beyond this period.

Appellants filed an application for a stay with the Chief Justice of this Court on December 10, 1962, and the Chief Justice granted a stay on December 13, 1962, without a hearing.

On February 6, 1963, appellants filed their statement of jurisdiction fully delineating their attack on the opinion below.

On February 11, 1963, appellees waived their respective rights to reply to the statement of jurisdiction and now file this motion and application to vacate the stay heretofore granted.

## Reasons for Vacating Stay

### *Continuation of stay effects irreparable injury to Appellees*

Pendency of a Christmas adjournment suggested the propriety of a stay in this case so as to allow appellants ample time to present their attack on the opinion below. This they have now had and it is submitted that appellants have failed to justify a continuance of a stay which, if continued, will substantially dilute, if not make academic, appellees' rights which the court below seeks to protect under the jurisdiction affirmed by the opinion of this Court in *Baker v. Carr*, 369 U. S. 186.

The lower court has found that the rights of three-quarters of a million people to fair apportionment of state representation have been violated.<sup>1</sup>

In July of this year a primary election will be held pursuant to what is now decreed to be an unconstitutional plan of apportionment. Success in this primary is tantamount to an election in over eighty per cent of the state and will determine representation in the State Senate until January, 1968.

The irreparable damage that continued delay in the enforcement of the lower court's decree imposes on the citizens of the communities represented by appellees is stated by Circuit Judge Bryan as follows [Appellants' Appendix 12]:

"However, our preference has been, and still is, for the General Assembly of Virginia to square the injustices of the 1962 Acts. But the circumstances did

---

<sup>1</sup> Population of: City of Norfolk, 304,869; Fairfax 285,194; Arlington 163,401.

not permit deferment of the determination of this suit until the next regular session of the Legislature, which convenes in January 1964. To begin with, the Senators elected in 1963 would not take office until January 1964 and would serve until January 1968. Similarly, Delegates chosen in 1963 would enter in January 1964 and be in office until January 1966. The disproportionate representations could not be righted by the 1964 General Assembly prior to 1966 in the case of Delegates, and not until 1968 as to the Senators, for there would not be another House election before 1965 and none for the Senate prior to 1967. This delay would be unreasonable."

Time has been made the essence of justice in this case, in part by reason of appellants' delaying tactics.<sup>2</sup>

It is submitted that appellants have sought delay for the sake of delay in hopes that enforcement of appellees' rights may be nudged beyond the perimeter of practical realization.

### **B**

#### *Justification for a stay has not been presented*

To justify a continuance of this stay, appellants have the burden of indicating good cause for a full review of the lower court's action by clearly pointing to error or the presence of issues, the resolution of which by this Court would establish national guide lines for the assistance of lower courts in determining similar cases.

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<sup>2</sup> The trial below was set for September 19, 1962, but was continued to October 22, 1962, on motion of the Attorney General of Virginia, to permit his office to interview certain unidentified potential witnesses. At the October trial no witness was produced to testify as to the rationale of the 1962 apportionment plan.

Neither is present here.

The lower court's opinion does not hold that a rational system of apportionment cannot accommodate a difference in population among districts.

The opinion below written by a Circuit Judge who is a native of Virginia, familiar with its physical characteristics and experienced in its governmental processes, holds only that where there is a four to one discrimination in district representation, the proponent of the discrimination must justify the condition with sound reason. [Appellants' Appendix 11, 12]

In other words, discrimination without reason is invidious.

Appellees submit that this conclusion is not debatable.

The decision of the court below likewise does not offer a medium for deciding the applicability of the Federal analogy to state legislative bodies as does the case of *Scholle v. Hare* (1962) 369 U. S. 429. The Virginia Senate and House are treated similarly by the Virginia Constitution.

### Conclusion

It is submitted that the record and pleadings in this case have now for the first time matured to the point that it may be made clear to this Court that the stay originally granted has served its purpose and should be vacated.

However, if this Court deems it proper to further consider continuance of a stay, an indefinite stay should not be granted without hearing all the argument and information that either party can offer.<sup>3</sup>

Accordingly, it is respectfully submitted that the stay heretofore granted should be vacated.

Respectfully submitted,

CHARLES L. GLANVILLE,  
WILLIAM L. SHEPHEARD,  
PAUL M. LIPKIN AND  
JACK R. WILKINS,

By HENRY E. HOWELL, JR.,  
*Of Counsel.*

HENRY E. HOWELL, JR.,  
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1408 Maritime Tower,  
Norfolk 10, Virginia.

LEONARD B. SACHS,  
520 Citizens Bank Building,  
Norfolk, Virginia.

---

<sup>3</sup> See dissent of Justice Jackson, *Land v. Dollar* (1951) 341 U.S. 737, 749.

-3-

**Proof of Service**

I, **HENRY E. HOWELL, JR.**, one of the attorneys for the appellees Glanville, Shepherd, Lipkin and Wilkins herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 12th day of February, 1963, I served copies of the foregoing Motion on the several appellants and appellees (principal plaintiffs below) by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: The Honorable Robert Y. Button, Attorney General of Virginia, Supreme Court-State Library Building, Richmond 19, Virginia; David J. Mays, Esquire, State-Planters Bank Building, Richmond 19, Virginia; Edmund D. Campbell, Esquire, 822 Southern Building, Washington 5, D. C., and E. A. Prichard, Moore Building, Fairfax, Virginia.

**HENRY E. HOWELL.**

(5910-5)

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APPENDIX ON BEHALF OF APPELLANTS

AUG 30 1963

JOHN F. DAVIS, CLERK

In The

**Supreme Court of the United States**

October Term, 1963

No. 69.

LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v.

HARRISON MANN, ET AL.,

*Appellees.*

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

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Richmond 19, Virginia

August 29, 1963

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In The  
**Supreme Court of the United States**  
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No. 69

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LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v. 0

HARRISON MANN, ET AL.,

*Appellees.*

---

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

---

APPENDIX ON BEHALF OF APPELLANTS

---

APPENDIX I

THE STATUTES INVOLVED

Chapter 635, Acts of Assembly of Virginia, 1962, page 1266, codified as §24-14 of the Code of Virginia (1950), as amended, 1962 Cumulative Supplement, Volume 5, pages 137, 138, reads as follows:

Be it enacted by the General Assembly of Virginia:

1. That §24-14, as amended, of the Code of Virginia, be amended and reenacted as follows:

§24-14. The State is hereby divided into thirty-six districts entitled to senators as follows:

First.—The counties of Accomack, Northampton, Princess Anne and the city of Virginia Beach, one.

Second.—Norfolk city, two.

Third.—Norfolk county and the city of South Norfolk, one.

Fourth.—The counties of Halifax, Charlotte and Prince Edward and the city of South Boston, one.

Fifth.—The counties of Isle of Wight, Nansemond, Southampton and the cities of Suffolk and Franklin, one.

Sixth.—The counties of Greenville, Prince George, Surry and Sussex and the city of Hopewell, one.

Seventh.—The counties of Brunswick, Lunenburg and Mecklenburg, one.

Eighth.—The counties of Dinwiddie, Nottoway and the city of Petersburg, one.

Ninth.—Arlington county, one.

Tenth.—City of Portsmouth, one.

Eleventh.—The counties of Appomattox, Buckingham, Cumberland, Powhatan, Amherst, Nelson and Amelia, one.

Twelfth.—Campbell county and city of Lynchburg, one.

Thirteenth.—The counties of Henry, Patrick and Pittsylvania and cities of Danville and Martinsville, two.

Fourteenth.—The counties of Smyth, Carroll, Floyd, Grayson and the city of Galax, one.

Fifteenth.—The counties of Washington, Lee and Scott and the city of Bristol, one.

Sixteenth.—The counties of Dickenson and Wise and the city of Norton, one.

Seventeenth.—The counties of Buchanan, Russell and Tazewell, one.

Eighteenth.—The counties of Bland, Giles, Pulaski and Wythe, one.

Nineteenth.—The counties of Alleghany, Bedford, Bortourt, Craig and Rockbridge, and the cities of Buena Vista, Clifton Forge, and Covington, one.

Twentieth.—The counties of Franklin, Montgomery, and Roanoke, and the city of Radford, one.

Twenty-first.—The counties of Augusta, Bath, and Highland, and the cities of Staunton and Waynesboro, one.

Twenty-second.—The counties of Page, Rappahannock, Rockingham and Warren, and the city of Harrisonburg, one.

Twenty-third.—The counties of Clarke, Frederick, Shenandoah and the city of Winchester, one.

Twenty-fourth.—The counties of Albemarle, Fluvanna, Greene and Madison, and the city of Charlottesville, one.

Twenty-fifth.—The counties of Goochland, Louisa, Orange and Spotsylvania, and the city of Fredericksburg, one.

Twenty-sixth.—The counties of Culpeper, Fauquier and Loudoun, one.

Twenty-seventh.—The county of Fairfax and the cities of Fairfax and Falls Church, two.

Twenty-eighth.—The counties of King George, Lancaster, Northumberland, Prince William, Richmond, Stafford and Westmoreland, one.

Twenty-ninth.—The counties of Caroline, Hanover, King William, Essex, King and Queen, Middlesex, Gloucester and Mathews, one.

Thirtieth.—City of Newport News and county of York, one.

Thirty-first.—City of Hampton, one.

Thirty-second.—The counties of Charles City, Chesterfield, James City and New Kent and the cities of Colonial Heights and Williamsburg, one.

Thirty-third.—Richmond city, two.

Thirty-fourth.—County of Henrico, one.

Thirty-fifth.—City of Roanoke, one.

Thirty-sixth.—City of Alexandria, one.

Chapter 638, Acts of Assembly of Virginia, 1962, page 1269, codified as § 24-12 of the Code of Virginia (1950), as amended, 1962 Cumulative Supplement, Volume 5, pages 135, 136, 137, reads as follows:

Be it enacted by the General Assembly of Virginia:

1. That § 24-12, as amended, of the Code of Virginia, be amended and reenacted as follows:

§24-12. Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Accomack, one.

Second.—Accomack and Northampton, one.

Third.—Albemarle and Greene, one.

Fourth.—Charlottesville, one.

Fifth.—Alexandria, two.

Sixth.—Alleghany, Covington and Clifton Forge, one.

Seventh.—Amelia, Powhatan and Nottoway, one.

Eighth.—Amherst and Lynchburg, one.

Ninth.—Arlington, three.

Tenth.—Augusta, Highland, Staunton and Waynesboro, two.

Eleventh.—Bedford, one.

Twelfth.—Bland and Giles, one.

Thirteenth.—Botetourt, Craig and Roanoke County, one.

Fourteenth.—Brunswick and Lunenburg, one.

Fifteenth.—Buchanan, one.

Sixteenth.—Russell and Dickenson, one.

Seventeenth.—Buckingham, Appomattox and Cumberland, one.

Eighteenth.—Campbell, one.

Nineteenth.—Caroline, King George, Essex and King and Queen, one.

Twentieth.—Carroll and Floyd, one.

Twenty-first.—Charles City, James City, New Kent, York and Williamsburg, one.

Twenty-second.—Charlotte and Prince Edward, one.

Twenty-third.—Chesterfield and Colonial Heights, one.

Twenty-fourth.—Clarke, Frederick and Winchester, one.

Twenty-fifth.—Danville, one.

Twenty-sixth.—Hampton, one.

Twenty-seventh.—Fairfax, and cities of Fairfax and Falls Church, three.

Twenty-eighth.—Fauquier and Rappahannock, one.

Twenty-ninth.—Fluvanna, Goochland and Louisa, one.

Thirtieth.—Franklin, one.

Thirty-first.—Gloucester, Mathews and Middlesex, one.

Thirty-second.—Grayson and Galax, one.

Thirty-third.—Greensville and Sussex, one.

Thirty-fourth.—Halifax and South Boston, one.

Thirty-fifth.—Hanover and King William, one.

Thirty-sixth.—Henrico, one.

Thirty-seventh.—Henry, Patrick and Martinsville, two.

Thirty-eighth.—Isle of Wight, Nansemond and Suffolk, one.

Thirty-ninth.—Northumberland, Westmoreland, Lancaster and Richmond County, one.

Fortieth.—Newport News, three.

Forty-first.—Lee, Wise, and city of Norton, two.

Forty-second.—Loudoun, one.

Forty-third.—Lynchburg, one.

Forty-fourth.—Madison, Culpeper and Orange, one.

Forty-fifth.—Mecklenburg, one.

Forty-sixth.—Montgomery and Radford, one.

Forty-seventh.—Nansemond and Suffolk, one.

Forty-eighth.—Nelson and Amherst, one.

Forty-ninth.—Norfolk county and South Norfolk, two.

Fiftieth.—Norfolk city, six.

Fifty-first.—Page and Warren, one.

Fifty-second.—Petersburg and Dinwiddie, two.

Fifty-third.—Pittsylvania, two.

Fifty-fourth.—Portsmouth, two.

Fifty-fifth.—Prince George, Surry and Hopewell, one.

Fifty-sixth.—Princess Anne and Virginia Beach, two.

Fifty-seventh.—Prince William, one.

Fifty-eighth.—Pulaski, one.

Fifty-ninth.—Richmond city, and Henrico, eight.

Sixtieth.—Roanoke County, one.

Sixty-first.—Roanoke city, two.

Sixty-second.—Rockbridge, Bath and Buena Vista, one.

Sixty-third.—Rockingham and Harrisonburg, two.

Sixty-fourth.—Shenandoah, one.

Sixty-fifth.—Smyth, one.

Sixty-sixth.—Southampton and the city of Franklin, one.

Sixty-seventh.—Spotsylvania, Stafford, and Fredericksburg, one.

Sixty-eighth.—Tazewell, one.

Sixty-ninth.—Washington, Scott, and Bristol, two.

Seventieth.—Wythe, one.

And the districts hereby created are hereby numbered one (1) to seventy (70) inclusive.

The reference to a county or city in this section is to the area comprising such county or city as of January one, nineteen hundred sixty-two.

## APPENDIX II

### BILL OF COMPLAINT FOR INJUNCTION

To the Honorable Judge of the Court aforesaid:

Your plaintiffs respectfully represent unto this Honorable Court as follows:

FIRST:—Plaintiffs herein are residents of the City of Norfolk, Virginia, citizens of the United States and of the Commonwealth of Virginia and are registered and qualified voters of said city and state and are entitled to vote for

members of the General Assembly of the Commonwealth of Virginia and bring this complaint for injunction on behalf of themselves and other citizens similarly situated.

SECOND:—The defendants, Levin Nock Davis, Alexander M. Harman, Jr., and Harry H. Vaughan, and each of them are citizens of the United States and of the Commonwealth of Virginia, reside in said Commonwealth and are members of the State Board of Elections of the Commonwealth, the defendant, Levin Nock Davis, being Secretary thereof. The said defendants are sued in their representative capacity as members of the State Electoral Board and in their capacity as members of said Electoral Board the said defendants are charged with supervising and co-ordinating the work of city and county electoral boards, including the designating of the number of candidates for which a voter in a particular locality may vote: they have the specific duty of certifying to local electoral boards the names of candidates to be printed on the ballots to be used in the Democratic Primary to be held in July of 1963, and said certifications limit the names of candidates for the General Assembly of Virginia to appear on said ballots and said certifications will be made immediately after April 10, 1963, the expiration time within [which] the names of candidates may be filed for the Virginia General Assembly; the said Electoral Board will promptly after April 10, 1963, have printed official war ballots for forwarding to members of the Armed Forces who apply for such absentee ballots, and the candidates appearing on said ballots will be limited to those certified by the said Electoral Board and voters in Norfolk will be limited to voting for two members of the State Senate and six members of the House of Delegates; and the said defendants perform other duties with respect to elections.

**THIRD:**—The defendants, James M. Wolcott, Joseph T. Fitzpatrick and James E. Baylor, and each of them are citizens of the United States and of the Commonwealth of Virginia, and reside in Norfolk, Virginia, and are members of the Norfolk Electoral Board. Said defendants are sued in their capacity as members of the Norfolk Electoral Board and as members of said board the said defendants are charged with conducting elections in the City of Norfolk, Virginia, including primaries and general elections; coordinate elections, including the printing of ballots for said election and designating the number of candidates for the Virginia General Assembly the voters of Norfolk may vote for. Unless enjoined the said defendants will limit the voters of Norfolk to voting for two members of the State Senate and six members of the House of Delegates.

**FOURTH:**—Sections 41 through 43, inclusive, of the Constitution of Virginia provide that the legislative power of the Commonwealth shall be vested in a General Assembly which shall consist of a Senate and a House of Delegates; that the Senate shall consist of not more than forty and not less than thirty-three members who shall be elected quadrennially by the voters of the several senatorial districts; that the House of Delegates shall consist of not more than one hundred and not less than ninety members who shall be elected biennially by the voters of the several House districts; and that a reapportionment of the Commonwealth into Senatorial and House districts shall be made in the year 1932 and every ten years thereafter.

**FIFTH:**—By Sections 24-14 and 24-12 of the Code of Virginia of 1950, as amended, the General Assembly of Virginia in 1962 purported to enact amendments to said sections reapportioning the Senate and House districts. A

list of the Senatorial Districts as thus purportedly reapportioned by the General Assembly, with their respective locations, populations and numbers of Senators is set forth in Exhibit "A" annexed to this complaint and made a part hereof, and a list of the House districts as thus purportedly apportioned by the General Assembly, with their respective locations, populations and numbers of Delegates are set forth in Exhibit "B" hereto attached and made a part hereof. Said Acts of the General Assembly became effective on June 28, 1962, and govern the number of representatives to the State Senate and House of Delegates from Norfolk to the Virginia General Assembly that the plaintiffs may exercise their right to vote for and govern the number of representatives to the State Senate and House of Delegates from Norfolk that will be elected in the Democratic Primary to be held in July of 1963 and for which the deadline for qualifying is now set for April 10, 1963.

**SIXTH:—**That the plaintiffs as citizens of the United States and of the State of Virginia possess the inherent right to vote for members of the Virginia General Assembly and to cast votes that are equally effective with the votes of every other citizen of said state and the said rights are recognized and guaranteed by the Constitution of the United States and, if not, should be protected by the Constitutional Laws of the State of Virginia.

**SEVENTH:—**Notwithstanding the Constitutional requirement that representation in the House of Delegates and the Senate of the Virginia General Assembly be fairly apportioned without effecting invidious discrimination as to the citizens of Norfolk, the General Assembly of 1960 refused to constitute a study commission to study the complex question of fair apportionment of the state's representation and

in view of this abrogation of responsibility then Governor, J. Lindsay Almond, Jr., appointed an impartial study commission consisting of citizens and legislators, which is popularly known as the "Hoover Commission," to study the question of fair apportionment of representation and directed them to report to the 1962 General Assembly. Said commission duly commissioned the Bureau of Public Administration of the University of Virginia to submit plans consistent with fair apportionment and said Bureau of Public Administration submitted plans known as Plans "A" and "B," a copy of said Plans "A" and "B" being attached to this complaint and made a part hereof and being marked as Exhibits "C" and "D" respectively. Each of said plans allocated to the City of Norfolk three representatives in the Senate of Virginia and seven representatives in the House of Delegates. The aforesaid "Hoover Commission" failed to adopt either plan "A" or "B," but did submit a report which allocated to Norfolk three representatives in the Senate and seven delegates in the House of Delegates. Said "Hoover Commission" report is attached hereto marked as Exhibit "E" and made a part of this complaint. (A material excerpt of said report has been attached to the copies of this complaint which are served upon the defendants and marked as Exhibit "E") The General Assembly of Virginia rejected the aforesaid plans and enacted token redistricting without rational basis that constituted a "crazy quilt" of inconsistencies and effected invidious discrimination in violation of plaintiffs' constitutional rights and those of other citizens of the City of Norfolk similarly situated.

**EIGHTH:**—Plaintiffs aver that by virtue of the invidious discrimination produced by the General Assembly in the re-apportionment statutes hereinbefore referred to, which limits Norfolk to two Senators and six Delegates, the vote of

the plaintiffs is inferior in value to the votes of other voters residing in other Senatorial districts and House districts in the Commonwealth. As an example of the unconstitutional effects of the discriminatory dilution of the weight of a voter's ballot in the City of Norfolk, as effected by the amendment of Section 24-14 of the Code of Virginia enacted by the General Assembly in 1962, each state Senator from the City of Norfolk represents 152,936 residents of the City of Norfolk, while less than half that number of persons residing in what is now the City of Chesapeake, Virginia (formerly the City of South Norfolk and Norfolk County, Virginia) are afforded equal representation in the State Senate. Each Delegate to the House of Delegates from the City of Norfolk represents 50,978 residents, while it takes only 36,823 persons residing in the City of Chesapeake to entitle these localities to the same representation in the House of Delegates. The City of Virginia Beach, Virginia (formerly the County of Princess Anne and the City of Virginia Beach) was awarded an extra delegate by the afore-said reapportionment statute based solely upon an increased population. The City of Norfolk, which enjoyed increased population between 1950 and 1960 of over 90,000 citizens, was given no additional representation in either the House of Delegates or the Senate. The unconstitutional discrimination against the equal weight of the ballot afforded the citizens of Norfolk, Virginia, by the disproportionate provisions of said amendment is further demonstrated and documented by the fact that the voters of Loudoun County have one Delegate for 24,549 persons; the voters of Shenandoah County have one Delegate for 21,825 persons; and the voters of Wythe County have one Delegate for 21,975 persons; and the voters of three other cities and twelve counties in the Commonwealth have a Senator for every 67,000 persons or less. The population growth in the

City of Norfolk, in which the plaintiffs reside, is much more rapid than in the favored sections of the Commonwealth referred to above, so that with each passing year the discrimination against plaintiffs and other voters in the City of Norfolk will become more acute and invidious. A table showing the "Index Value" of the right to vote for members of the General Assembly of Virginia, by counties, from 1910 through 1960 is annexed as Exhibit "F" to this complaint and made a part hereof.

NINTH:—Plaintiffs aver that the aforementioned Acts of the General Assembly embodied in Code Sections 24-12 and 24-14, as amended in 1962, have resulted and will continue to result in invidious discrimination in violation of plaintiffs' constitutional rights and the constitutional rights of all other voters of the City of Norfolk and against the voters of many other Senatorial and House districts within the Commonwealth.

TENTH:—Plaintiffs aver that they possess the inherent right to vote for members of the Virginia General Assembly and to cast votes which are equally effective with the votes of every other citizen of said state and the said rights are recognized and guaranteed by the Constitution of the United States and, if not, should be protected by the constitutional laws of the State of Virginia; that plaintiffs' rights in this respect entitle them to the right to vote for three Democratic candidates for the Senate of Virginia and seven Democratic candidates for the House of Delegates of Virginia to offer for election in the General Election to be held in November 1963; and if the defendants are not enjoined from initiating, supervising, conducting elections, printing ballots, and certifying candidates to the various electoral boards, including the electoral board of the City of Norfolk, pursuant to the

the aforesaid unconstitutional acts of reapportionment, then plaintiffs will be deprived of their right to vote for the number of Senators and Delegates which fair apportionment would allocate to the City of Norfolk and the plaintiffs will suffer irreparable damage and harm in that they will be unequally and unjustly represented for a period of at least four years in the Senate of Virginia and two years in the House of Delegates. Plaintiffs being without remedy at law, the defendants, unless prevented by this Court, will, therefore, perform their duties in the conduct of said Democratic Primary in an unconstitutional manner and in violation of the plaintiffs' rights.

WHEREFORE, plaintiffs pray:

(1) That Levin Nock Davis, Secretary, State Board of Elections; Alexander M. Harman, Jr., Member, State Board of Elections; Harry E. Vaughan, Member, State Board of Elections; James M. Wolcott, Member, Electoral Board of the City of Norfolk; Joseph T. Fitzpatrick, Member, Electoral Board of the City of Norfolk; and James E. Baylor, Member, Electoral Board of the City of Norfolk, be made parties defendant to this bill of complaint; that they be required to answer the same; and that proper process may issue therefor.

(2) That an injunction may issue inhibiting and restraining the said defendants from certifying candidates, initiating, supervising, conducting, co-ordinating, printing ballots for, or in any way permitting or effecting a Democratic Primary election or any other election for the office of the House of Delegates or Senate of the General Assembly of Virginia pursuant to the malapportionment of representation provided for by the aforesaid sections 24-12 and 24-14.

of the Code of Virginia of 1950, as amended in 1962, and that said injunction continue in full force and effect until such time as the General Assembly of Virginia convenes in special session and enacts legislation that will afford plaintiffs and others similarly situated fair and equal representation in the Virginia General Assembly.

(3) That plaintiffs be granted such other and further and general relief as to equity may seem meet and just.

(s) N. P. Tyler  
N. P. Tyler

(s) L. A. Jett, Jr.  
L. A. Jett, Jr.

STATE OF VIRGINIA,  
CITY OF NORFOLK, to-wit:

N. P. Taylor and L. A. Jett, Jr., the plaintiffs named in the foregoing bill, being duly sworn, say that the facts and allegations therein contained are true, except so far as they are based upon statistics, studies and records, and as to such the same are believed to be true.

(s) N. P. Tyler  
N. P. Tyler

(s) L. A. Jett, Jr.  
L. A. Jett, Jr.

Taken, sworn to and subscribed before me, Catherine J. Crane, a Notary Public of and for the city of Norfolk, and the State of Virginia, this the 26th day of March, 1963.

(s) Catherine J. Crane  
Notary Public

My commission expires November 8, 1965.

**ANSWER AND CROSS-BILL**

Now come Levin Nock Davis, Secretary of the State Board of Elections of the Commonwealth of Virginia, and Alexander M. Harman, Jr., and Harry H. Vaughan, Members of the State Board of Elections of the Commonwealth of Virginia, and file their joint and several answer to the bill of complaint herein and say:

1. The allegations of the FIRST, SECOND and THIRD paragraphs of the bill of complaint are admitted.

2. For answer to the FOURTH paragraph of the bill of complaint, these defendants say that Section 40 of the Constitution of Virginia provides that the legislative power of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Delegates. These defendants admit that Sections 41 through 43, inclusive, of the Constitution of Virginia contain provisions consistent with the remaining allegations of said FOURTH paragraph of the bill of complaint.

3. For answer to the FIFTH paragraph of the bill of complaint, these defendants say that the General Assembly of Virginia, at its regular session of 1962, amended Sections 24-14 and 24-12 of the Virginia Code; that said amendments became effective on June 29, 1962; that said amendments govern the number of representatives to the Senate of Virginia and House of Delegates of Virginia from the City of Norfolk for which plaintiffs may vote and the number of representatives to the Senate of Virginia and the House of Delegates of Virginia from the City of Norfolk which will be selected in the Democratic Primary to be held

on July 9, 1963; and that the time within which prospective candidates could qualify for said Democratic Primary expired April 10, 1963. These defendants neither admit nor deny the remaining allegations of said FIFTH paragraph, including the accuracy of the matters set forth in Exhibits "A" and "B" annexed to the bill of complaint, and call for strict proof of the same.

4. The allegations of the SIXTH paragraph of the bill of complaint are denied.

5. For answer to the SEVENTH paragraph of the bill of complaint, these defendants say that, in 1960, the then Governor of Virginia, J. Lindsay Almond, Jr., appointed a commission to study the question of the reapportionment of the General Assembly of Virginia and directed said commission to make a report to the General Assembly of Virginia at its regular session of 1962; that the Bureau of Public Administration of the University of Virginia submitted plans, known as Plan A and Plan B, to said commission; that the commission declined to adopt either Plan A or Plan B; that the commission filed its report with the General Assembly of Virginia at its regular session of 1962; and that the General Assembly of Virginia declined to enact either Plan A or Plan B or legislation recommended by a majority of said commission. The allegations of the concluding sentence of the SEVENTH paragraph of the bill of complaint are denied. These defendants neither admit nor deny the remaining allegations of the SEVENTH paragraph of the bill of complaint, including the accuracy of the matters set forth in Exhibits "C," "D" and "E" annexed to the bill of complaint, and call for strict proof of the same.

6. The allegations of the first sentence of the EIGHTH paragraph of the bill of complaint are denied. These defend-

ants neither admit nor deny the remaining allegations of the EIGHTH paragraph of the bill of complaint, including the accuracy of the matters set forth in Exhibit "F" annexed to the bill of complaint, and call for strict proof of the same.

7. The allegations of the NINTH paragraph of the bill of complaint are denied.

8. The allegations of the TENTH paragraph of the bill of complaint are denied.

Now having fully answered, these defendants pray that the injunction sought by the bill of complaint be denied.

#### CROSS-BILL

In their bill of complaint the plaintiffs have alleged that the General Assembly of Virginia was not fairly apportioned by Sections 24-14 and 24-12 of the Virginia Code, as amended by the General Assembly of Virginia at its regular session of 1962, and that invidious discrimination against the citizens of Norfolk, Virginia, was caused thereby. They have further alleged that there was unconstitutional discrimination against the equal weight of the ballot afforded the citizens of Norfolk and that "pursuant to the aforesaid unconstitutional acts of reapportionment" the plaintiffs were deprived of their rights. All of these and similar allegations have been denied in the answer of these defendants.

These defendants now affirmatively allege that Sections 24-14 and 24-12 of the Virginia Code, as amended by the General Assembly of Virginia at its regular session of 1962, are valid enactments of the General Assembly of Virginia, that said enactments infringe no rights secured to the plaintiffs by the Constitution of Virginia or the Constitution of

the United States, and that said enactments effect no invidious discrimination against the citizens of Norfolk. These defendants further allege that they possess the legal right and are charged with the legal duty of executing the relevant election laws of the Commonwealth of Virginia in conformity with the apportionment of the Senate of Virginia and House of Delegates of Virginia contained in Sections 24-14 and 24-12 of the Code of Virginia (1950) as amended, and that, unless enjoined by this Court, they intend to discharge the duties encumbered upon them by such laws with respect to the Democratic Primary to be held on July 9, 1963, and the General Election to be held on November 5, 1963.

These defendants ask that this portion of their answer be treated as a cross-bill and that there be an adjudication on the merits of the issues raised by the allegations of the plaintiffs and the cross-allegations of these defendants as to the constitutionality of Sections 24-14 and 24-12 of the Virginia Code (1950) as amended.

WHEREFORE, these defendants join in the plaintiffs' prayer for other, further and general relief and pray that this Court will take jurisdiction of the controversy herein and adjudicate the rights, duties, powers and authorities of

the parties herein and enter such order as may be appropriate to protect such rights and compel the discharge of such duties.

LEVIN NOCK DAVIS  
ALEXANDER M. HARMAN, JR.  
HARRY H. VAUGHAN

Members of and constituting  
the State Board of Elections  
of the Commonwealth of  
Virginia

By: .....  
*Of Counsel*

ROBERT Y. BUTTON  
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R. D. McILWAIN, III  
Assistant Attorney General

Supreme Court-State Library-Building  
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HENRY T. WICKHAM  
State-Planters Bank Building  
Richmond 19, Virginia  
Special Assistant

#### CERTIFICATION

I certify that a copy of the within Answer and Cross-Bill was served upon Henry E. Howell, Jr., Esq., Suite 808 Maritime Tower, Norfolk 10, Virginia, counsel for plaintiffs, this 17th day of April, 1963, pursuant to the provisions of Rule 2:17 of the Rules of the Supreme Court of Appeals of Virginia.

.....  
Assistant Attorney General

**ANSWER TO CROSS-BILL**

Now come the plaintiffs and in answer to the cross-bill filed herein set forth as follows:

**FIRST:**—The plaintiffs deny that Sections 24-14 and 24-12 of the Code of Virginia of 1950, as amended by the General Assembly at its regular session in 1962 are valid enactments of the General Assembly of Virginia and deny the allegation that said enactments do not impose invidious discrimination against the citizens of Norfolk.

**SECOND:**—Plaintiffs deny that defendants possess the legal right to execute the relevant election laws of the Commonwealth of Virginia for an election to the Senate of Virginia and the House of Delegates of Virginia in the Democratic Primary to be held on July 9, 1963, or in the General Election to be held November 5, 1963, when said elections are held pursuant to unconstitutional reapportionment statutes.

**THIRD:**—Plaintiffs state that if a Democratic Primary is held pursuant to the aforesaid unconstitutional statutes Democratic voters of the City of Norfolk will be irreparably damaged in that they will be deprived of the right to elect Democratic nominees in the numbers that would be allocated to the citizens of Norfolk if the State of Virginia was apportioned by constitutional enactments, and further, if a General Election be held pursuant to the aforesaid unconstitutional apportionment statutes all voters, regardless of party, will be deprived of fair, equitable and constitutional representation in the General Assembly and the value of their votes will be unconstitutionally diluted, devalued and discriminated against.

FOURTH:—Plaintiffs join the defendants in asking this Court to expeditiously and promptly adjudicate the merits of the issues raised by the allegations of the plaintiffs and the cross-allegations of the defendants as to the constitutionality of Sections 24-14 and 24-12 of the Code of Virginia of 1950, as amended.

WHEREFORE, these plaintiffs respectfully request this Court to hear this cause in ample time preceding the Democratic Primary of July 9, 1963, so as to enable the plaintiffs to obtain the relief sought in the prayer of their complaint filed herein.

N. P. TYLER and L. A. JETT, JR.,  
who sue in behalf of themselves  
and all other citizens similarly situated,

By: (s) Henry E. Howell, Jr.  
*Of Counsel*

#### CERTIFICATION .

I hereby certify that a copy of the foregoing Answer to Cross-Bill was this date mailed to Robert Y. Button, Attorney General of Virginia, R. D. McIlwaine, III, Assistant Attorney General of Virginia, and Henry T. Wickham, Esquire, counsel for the defendants. Dated at Norfolk, Virginia, this 26th day of April, 1963.

**PROOF OF SERVICE**

I, R. D. McIlwaine, III, one of counsel for the appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of August, 1963, I served copies of the within Appendix on Behalf of Appellants on the several appellees herein by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: Edmund D. Campbell, Esquire, Southern Building, Washington, D. C.; E. A. Prichard, Esquire, 106 N. Payne Street, Fairfax, Virginia; Sidney H. Kelsey, Esquire, 1408 Maritime Tower, Norfolk, Virginia; Henry E. Howell, Jr., Esquire, 808 Maritime Tower, Norfolk, Virginia; and Leonard B. Sachs, Esquire, Citizens Bank Building, Norfolk, Virginia.

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*Assistant Attorney General*

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BRIEF ON BEHALF OF APPELLANTS

In The  
**Supreme Court of the United States**

October Term, 1963

No. 69

LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v.

HARRISON MANN, ET AL.,

*Appellees.*

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

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August 29, 1963

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In The  
**Supreme Court of the United States**  
October Term, 1963

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No. 69

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LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,  
*Appellants,*

v.

HARRISON MANN, ET AL.,  
*Appellees.*

---

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

---

**BRIEF ON BEHALF OF APPELLANTS**

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**OPINION OF THE COURT BELOW**

The opinion of the three-judge United States District Court for the Eastern District of Virginia, at Alexandria, in this case is reported at 213 F. Supp. 577 as *Mann v. Davis*.

### THE JURISDICTION OF THE COURT

The jurisdiction of this Court rests on 28 U. S. C., Section 1253.

The final decree of the court below was filed on November 28, 1962. The notice for appeal was filed on December 10, 1962. Probable jurisdiction was noted by this Court on June 10, 1963.

### THE STATUTES AND STATE CONSTITUTIONAL PROVISIONS INVOLVED

The validity of two state statutes is involved. Chapter 635, Acts of the General Assembly of Virginia, 1962, p. 1266, codified as Section 24-14 of the Code of Virginia, as amended, 1962 Cumulative Supplement, Volume 5, pp. 137, 138, divided the state into thirty-six (36) senatorial districts. Chapter 638, Acts of the General Assembly of Virginia, 1962, p. 1269, codified as Section 24-12 of the Code of Virginia, as amended, 1962 Cumulative Supplement, Volume 5, pp. 135, 136, 137, created seventy (70) house districts and distributed and apportioned the one hundred (100) members of the House of Delegates throughout such districts for purposes of representation. Due to the length of these statutes they are not here set out verbatim. Their text is set forth as Appendix I to this brief.

The reapportionment statutes were enacted pursuant to the provisions of Section 43 of the Constitution of Virginia which reads as follows:

"§ 43. Apportionment of Commonwealth into senatorial and house districts. The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

### THE QUESTIONS PRESENTED

1. Should the court below have declined to entertain jurisdiction in this case in the exercise of its discretion conformably with the doctrine of abstention?

2. Did the court below err in declaring and adjudging that Sections 24-12 and 24-14 of the Code of Virginia (1950), as amended, denied the appellees and those persons similarly situated the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States?

### STATEMENT OF THE CASE

This case was heard before a statutory three-judge court on the complaints of the appellees seeking declaratory judgments and permanent injunctions against the enforcement and operation of two reapportionment statutes enacted by the General Assembly of Virginia at its regular session of 1962.

The appellees, original and intervening plaintiffs below, are registered and qualified voters of the Commonwealth of Virginia residing, respectively, in Arlington County, Fairfax County and the City of Norfolk. The appellants, defendants below, are the Secretary of the State Board of Elections, the members thereof, and various local elections officials of Arlington County, Fairfax County, and the City of Norfolk, Virginia.

The judgment of the court below declared Sections 24-12 and 24-14 of the Code of Virginia, as amended, to be unconstitutional and void. The appellants were also restrained and enjoined from proceeding under or pursuant to the said sections, but the enforcement of the injunction was stayed until January 31, 1963, so that (1) the General Assembly of Virginia could be called and convened in special session "to enact appropriate reapportionment statutes under the Constitution of Virginia and the Constitution of the United

States" or so that (2) during the said suspension the appellants might appeal to this Court for review.

Upon the application of the appellants, the execution and enforcement of the judgment of the court below was stayed pending the perfection of this appeal and the final disposition of such appeal by this Court, pursuant to the order of the Chief Justice entered on December 15, 1962.

The only evidence introduced by the appellees in the court below which might be considered material, dealt with population figures. It may be summarized by quoting from the opinion of the majority below (213 F. Supp. at 581-583):

#### "THE SENATE

"The disparities in the Senate found in the 1962 apportionment acts are pointed up by the plaintiffs' evidence as follows:

"A citizen of Arlington, Fairfax, or Norfolk has representation or voting power in the Senate of *less* than  $\frac{1}{2}$  of that possessed by a citizen of any of 6 of the 33 remaining districts in the State. Putting it conversely, his voting power is more than 2-times the voting power of any of the plaintiffs. Further, in 5 more of the districts the power of each vote is *almost twice* that of any plaintiff on an average. Thus  $\frac{1}{3}$  of the other 33 senatorial districts are nearly 100% richer in each vote's worth than are the plaintiffs' districts:

"In substantiation of this summary the plaintiffs offered in evidence these figures:

"Virginia's 1960 population is 3,966,949. Dividing this total by the number of Senators—40—gives an ideal representation of one Senator for each 99,174 persons.

	Arlington	Fairfax	City of Norfolk
"Population	163,401	285,194	304,869
No of Senators	1	2	2
Population per Senator	163,401	142,597	152,435

District	Population	No. of Senators	Population, Per Senator
Brunswick Lunenburg Mecklenburg	61,730	1	61,730
Goochland Louisa Orange Spotsylvania City of Fredericksburg	62,523	1	62,523
Culpeper Fauquier Loudoun	63,703	1	63,703
Clarke Frederick Shenandoah City of Winchester	66,818	1	66,818
Halifax Charlotte Prince Edward City of South Boston	67,100	1	67,100
Dickenson Wise City of Norton	68,803	1	68,803
Bland Giles Pulaski Wythe	72,434	1	72,434

District	Population	No. of Senators	Population Per Senator
Greensville			
Prince George			
Surry			
Sussex			
Hopewell	72,951	1	72,951
Norfolk County			
City of South			
Norfolk (Now			
City of			
Chesapeake)	73,647	1	73,647
Dinwiddie			
Nottoway			
City of			
Petersburg	74,074	1	74,074
Appomattox			
Buckingham			
Cumberland			
Powhatan			
Amherst			
Nelson			
Amelia	76,652	1	76,652

Total: 11 districts

### "HOUSE OF DELEGATES

"In the House plaintiffs contend that a vote in Fairfax has less than  $\frac{1}{4}$  of the voting force of a vote in 4 districts;  $\frac{1}{3}$ —or less than that—of a vote in at least 16 others; and thus the preferred districts amount to a total of 20 of the other 67 districts in the State. In addition, both Norfolk and Arlington have almost double the individual vote-weight of Fairfax; but these two have only approximately  $\frac{1}{2}$  the ballot-potency of

7 districts. The following figures have been adduced to vouch the contention.

"With the State population at 3,966,949 each of the 100 Delegates would presumably represent 39,669 persons.

	Arlington	Fairfax	City of Norfolk
"Population	163,401	285,194	304,869
No. of Delegates	3	3	6
Population per Delegates	54,467	95,064	50,812

District	Delegates	Population	Population Per Delegate
Shenandoah	1	21,825	21,825
Wythe	1	21,975	21,975
Grayson	1	22,644	22,644
Bland	1	23,201	23,201
Loudoun	1	24,549	24,549
Gloucester	1	25,359	25,359
Franklin	1	25,925	25,925
Rockingham	2	52,401	26,200
Buckingham	1	26,385	26,385
Southampton	1	27,195	27,195
Pulaski	1	27,258	27,258
Charlotte	1	27,489	37,489
Alleghany	1	28,458	28,458
Greensville	1	28,566	28,566
Pittsylvania	2	58,296	29,148
Fluvanna	1	29,392	29,392
City of Charlottesville	1	29,427	29,427
Fauquier	1	29,434	29,434
City of Petersburg	2	58,933	29,466
Amelia	1	29,703	29,703

Total: 20 districts"

The appellants introduced twelve (12) exhibits in the court below. They may be summarized as follows:

1. Defendant's Exhibit No. 1, which is the annual report of the Virginia Alcoholic Beverage Control Board, shows, beginning on page 48, the number of incorporated towns located in the various counties of Virginia (R. 237).

2. Defendant's Exhibit No. 2, a letter of Mr. Richard M. Scammon, Director of the Bureau of Census, dated September 20, 1962, certified that the number of males 14 years and over in the labor force reported as in the armed forces as of April 1, 1960, for the county of Arlington, Virginia, was 10,628 (R. 250).

3. Defendants' Exhibit No. 3 shows the population of each State according to the 1960 census, the number of electors allotted to each State and the population per elector based upon the 1960 census. The smallest population per elector exists in Alaska, with 88,722 inhabitants per elector; the largest population per elector exists in California with 392,930 inhabitants per elector. In several other states, i.e., Florida, Illinois, Indiana, Massachusetts, Michigan, Pennsylvania and Texas, the population variance per elector as compared to Alaska is substantially as great as that which exists between California and Alaska (R. 252, 253).

4. Defendants' Exhibit No. 4 contains apportionment data of New York State as shown by the opinion of the three-judge District Court in *W.M.C.A., Inc. v. Simon*, 208 F. Supp. 368. This data shows the population variance ratio between the largest and smallest Senate and Assembly districts in New York based upon population. The largest Senate district has a population of 666,784; the smallest Senate district had a population of 168,398—a population variance ratio of approximately 3.96 to 1. The largest

Assembly district had a population of 222,261; the smallest Assembly district had a population of 15,044—a population variance ratio of approximately 14.1 to 1 (R. 254).

5. Defendants' Exhibits Nos. 5 and 6 show the rank order of Virginia in comparison with other States, based upon population, before and after the 1962 reapportionment statutes were enacted by the General Assembly of Virginia. These exhibits were prepared by the Bureau of Public Administration of the University of Virginia, and Exhibit No. 5 established that Virginia ranks eighth in the United States in fair representation, based solely on population, subsequent to the 1962 reapportionment legislation (R. 262, 268).

6. Defendants' Exhibits Nos. 7, 8, 9 and 10 compare rural and urban representation in the Senate and House of Delegates of Virginia and establish that no discrimination exists in favor of rural areas as against urban areas (R. 273, 282, 293, 303).

7. Defendants' Exhibit No. 11, United States Census of Population, 1960 (Virginia) gives the total military personnel in Virginia at page 48-395. Table 115 indicates that the number of persons fourteen years of age and over residing in Fairfax County and in the armed forces of the United States totals 16,693 (R. 318, 319, 320, 321), and that the number of such persons residing in the City of Norfolk totals 44,381.

8. Defendants' Exhibit No. 12 is a statement made by the Governor of Virginia when he signed the 1962 reapportionment statutes of Virginia, now codified as Sections 24-12 and 24-14 of the Virginia Code (R. 322).

## SUMMARY OF ARGUMENT

## I.

The Court Below Should Have Declined to Entertain Jurisdiction in This Case in the Exercise of Its Discretion Conformably with the Doctrine of Abstention

The facts and circumstances surrounding this case are entirely different from those involved in apportionment decisions handed down since *Baker v. Carr*, 369 U. S. 186.

1. The General Assembly of Virginia has faithfully followed the mandate to reapportion found in Section 43 of the Virginia Constitution of 1902, as amended.

2. The appellees have an adequate remedy in the courts of this state.

3. The courts of this state have not refused to consider the relief requested by the appellees.

4. Section 43 of the Virginia Constitution has not been construed by the state courts and construction thereof is vital to a final determination of the issue presented by the appellees.

It is conceded that the appellees have an appropriate and adequate remedy in the state courts of Virginia. *Brown v. Saunders*, 159 Va. 28, 166 S. E. 105 (1932) and *Baker v. Carr*, *supra*. It must also be conceded that this case involves an area which vitally affects the independence of state governments, for without Sections 24-12 and 24-14 of the Code of Virginia, as amended, the Commonwealth of Virginia could not function. Under such circumstances, the doctrine of equitable abstention must be applied, or discarded as a time-honored principle of equity.

Without doubt, the facts and circumstances set forth above required the majority below, in the exercise of discretion, to abstain from hearing this case on its merits. The decisions of this Court support this position. *Pennsylvania v. Williams*, 294 U. S. 176; *Railroad Commission v. Pullman Co.*, 312 U. S. 496; *Stainback v. Ho Hock Ke Lok Po*, 336 U. S. 368; *Government & C.E.O.C., CIO v. Windsor*, 353 U. S. 364; *Harrison v. N.A.A.C.P.*, 360 U. S. 167; *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25; and *Martin v. Cressy*, 360 U. S. 219. Compare, *County of Alleghany v. Mashuda*, 360 U. S. 185.

As a matter of law, few public interests have a higher claim upon the discretion of a federal chancellor than avoidance of needless friction between state and federal governments and avoidance of federal constitutional questions which may become unnecessary to consider because of state judicial construction. Consistent with these fully predated principles, the doctrine of abstention should have been applied by the majority below.

## II.

### Sections 24-12 and 24-14 of the Virginia Code Are Not Violative of the Fourteenth Amendment to the Constitution of the United States

The only discrimination alleged—or attempted to be established by appellees' proof—in the case at bar is one exclusively of numbers and is predicated upon numerical disparities alleged to exist among the populations embraced in certain of the House and Senate districts established by the challenged statutes. No suggestion is made that the statutes in question discriminate against any individual, group or district upon the basis of race, creed, racial origin, political persuasion or rural-urban character.

In ascertaining these population figures, no consideration was given, either by the appellees or the majority jurists in the court below, to military related population—which population (because of its transient, mobile, non-citizen character) could properly have been excluded by the General Assembly of Virginia in fixing the number of inhabitants of each House and Senate district for the purpose of representation. Appellants assert that such classification of inhabitants for the purpose of representation is *not* unreasonable, and appellees made no attempt to demonstrate that such classification is unreasonable.

The population variance ratios upon which appellees rely, which *include* military related population, are well within the limits allowable under the Fourteenth Amendment as interpreted and applied in a host of decisions rendered by State and Federal courts since the advent of *Baker*.

Based solely upon population; including military related population, Virginia ranks 8th in the United States in fairness of representation subsequent to the enactment of the challenged statute, according to an uncontested exhibit prepared by the Bureau of Public Administration of the University of Virginia. Invalidation of the Virginia reapportionment system necessarily entails invalidation of the reapportionment systems of every other State in the Union with the possible exception of the seven States in which more proportionate representation is available, e.g., Oregon, Massachusetts, New Hampshire, West Virginia, Maine, Wisconsin and Alaska. See, *Mann v. Davis, supra*, at 589 (dissenting opinion). In at least seven of those States which rank below Virginia in fairness of representation, based solely on population, e.g., Florida, Idaho, Louisiana, Maryland, New Jersey, New York and Ohio, reapportionment plans have already been judicially approved under the Fourteenth Amendment by either State or Federal courts.

The most excessive population variance ratio in Virginia, based solely on population, does not exceed that which exists in the Electoral College of the United States. Appellants submit that no invidious discrimination antagonistic to the Fourteenth Amendment can exist with respect to any reapportionment system which contains no population variance ratio which exceeds that of the Electoral College.

The jurists constituting the majority in the court below did not attempt to harmonize their conclusion with—indeed, did not even mention—the decisions of three-judge Federal District Courts in the Florida and New York cases. See, *Sobel v. Adams*, 208 F. Supp. 316; *W.M.C.A., Inc. v. Simon*, 208 F. Supp. 368, probable jurisdiction noted ..... U. S. .... Moreover, the majority opinion of the court below made no reference to any factor other than population figures and gave no consideration to the factors of military related population, relative size of various districts, number of political subdivisions in various districts or density of population in various districts. Appellants assert that each of these factors must be considered in determining the validity of the Virginia reapportionment system under the Fourteenth Amendment.

## ARGUMENT

### I.

The Court Below Should Have Declined to Entertain Jurisdiction in This Case in the Exercise of Its Discretion Conformably with the Doctrine of Abstention

The doctrine of equitable abstention is here involved and it seems appropriate to state first that the facts and circumstances surrounding this case are entirely different from those involved in apportionment decisions handed down since *Baker v. Carr*, *supra*.

1. The General Assembly of Virginia has faithfully followed the mandate to reapportion found in section 43 of the Virginia Constitution of 1902, as amended.<sup>1</sup>

2. The appellees have an adequate remedy in the courts of this state.

3. The courts of this state have not refused to consider the relief requested by the plaintiffs.

4. Section 43 of the Virginia Constitution has not been construed by the state courts and construction thereof is vital to a final determination of the issue presented by the plaintiffs.

5. A serious federal constitutional question may be avoided by invoking the doctrine of abstention in this case.

As this Court knows, abstention is invoked by a federal court of equity in furtherance of an established public policy which has been well stated in *Pennsylvania v. Williams*, 294 U. S. 176, 185:

"\* \* \* It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy.  
\* \* \*"

<sup>1</sup> Since 1900 the House of Delegates has been reapportioned by the following acts: Acts of 1906, p. 84; Acts of 1910, p. 9; Acts of 1922, p. 463; Acts of 1923, p. 17; Acts of 1932, p. 337; Acts of 1942, chapt. 387; Acts of 1948, p. 803; Acts of 1952, Ex. Sess., Chapt. 18; Acts of 1958, Chapt. 33; and Acts of 1962, chapt. 638.

Since 1900 the Senate of Virginia has been reapportioned by the following acts: Acts of 1901-2, p. 800; Acts of 1922, p. 463; Acts of 1923, p. 17; Acts of 1934, p. 252; Acts of 1942, chapt. 387; Acts of 1948, p. 805; Acts of 1952, Ex. Sess. Chapt. 17; Acts of 1958, chapt. 333; and Acts of 1962, chapt. 635.

As to restraining state officers, this Court has said in *Hawks v. Hamill*, 288 U. S. 52:

“\* \* \* Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting *colore officii* in a conscientious endeavor to fulfill their duty to the state. A prudent self-restraint is called for at such time if state and national functions are to be maintained in stable equilibrium. Reluctance there has been to use the process of federal courts in restraint of state officials *though the rights asserted by the complainants are strictly federal in origin*. (288 U. S. 61, 77 L. Ed. 619) (Italics supplied)

In *Matthews v. Rodgers*, 284 U. S. 521, this was said:

“\* \* \* The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. \* \* \*” (284 U. S. p. 525, 76 L. Ed. at p. 452.) See also, *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293, 87 L. Ed. 1407.

Mr. Justice Frankfurter, speaking for this Court in *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496—a case involving an attempt to enjoin an order of the Texas Railroad Commission—elaborated upon the principle under consideration in the following language (312 U. S. at pp. 500-501):

“An appeal to the chancellor, as we had occasion to recall only the other day, is an appeal to the ‘exercise of the sound discretion, which guides the determination of courts of equity.’ *Beal v. Missouri P. R. Corp.* No.

72, decided January 20, 1941 [312 US 45, ante, 577, 61 S Ct 418]. The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. \* \* \* *Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law.* Fenner v. Boykin, 271 US 240, 70 L.Ed. 927, 46 S Ct. 492; Spielman Motor Sales Co. v. Dodge, 295 US 89, 79 L.Ed. 1322, 55 S Ct. 678; or the administration of a specialized scheme for liquidating embarrassed business enterprises, Pennsylvania v. Williams, 294 US 176, 79 L.Ed. 841, 55 S Ct 380, 96 ALR 1166; or the final authority of a state court to interpret doubtful regulatory laws of the state, Gilchrist v. Interborough Rapid Transit Co., 279 US 159, 73 L.Ed. 652, 49 S Ct 282; cf. Hawks v. Hamill, 288 US 52, 61, 77 L.Ed. 610, 618, 53 S Ct 240. *These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion' restrain their authority because of 'scrupulous regard for the rightful independence of the state government,' and for the smooth working of the federal judiciary.* See Cavanaugh v. Looney, 248 US 453, 457, 63 L.Ed. 354, 358, 39 S Ct 142; Di Giovanni v. Camden F. Ins. Asso., 296 US 64, 73, 80 L.Ed. 47, 53, 56 S Ct 1. *This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of these powers.* \* \* \* Regard for these important considerations of policy in the administration of federal equity jurisdiction is decisive here. \* \* \* In the absence of any showing that obvious methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands. \* \* \* (Italics supplied)

A mere reading of the complaints filed and the state statutes challenged in this proceeding clearly establishes that this case is one in which the plaintiffs below asked the three-judge district court to enjoin state officials from enforcing state statutes which are of such primary importance that the state government could not function without them.

Sections 24-12 and 24-14 of the Code of Virginia, as amended, apportion the state into senatorial and house districts. Without them, the independence of the Commonwealth of Virginia would be destroyed. Under such circumstances, the doctrine of equitable abstention must be applied or discarded as a time-honored principle of equity. Certainly, this Court has dealt with no state statute in applying abstention that so vitally affects "the rightful independence of state governments in carrying out their domestic policy" as the reapportionment statutes.

In the case of *Stainback v. Mo Hock Ke Lok Po*, 336 U. S. 368, the complainants sought an injunction restraining the officers of the territory of Hawaii from enforcing an Act, "Regulating the Teaching of Foreign Languages to Children," against the teaching of foreign languages to their pupils.

The only sanction for enforcement of the Act was by injunction and the "complaint alleged that, in violation of the Fifth Amendment, the Act deprived plaintiff schools of the right to manage their property by contracting with instructors and parents for the teaching of Chinese, and the plaintiff teacher of Chinese of his right to follow his occupation" (336 U. S. at p. 373).

The language of the Act in question was not ambiguous and its application appeared clear.<sup>2</sup> This Court held, how-

<sup>2</sup>The text of Act is discussed and a part thereof is set forth as footnotes 3 and 4 at 336 U. S. 371, 372 and 93 L. Ed. 746.

ever, that the complaint "called for broad consideration of the application of the Act to foreign language schools and teachers \* \* \* [and] had not been construed by the Hawaiian courts" (336 U. S. at p. 383).

It was pointed out that there was no reason to fear a court of equity and that there was every reason to believe that the plaintiffs' constitutional rights would be fully protected in the equity courts of the Territory and that an appeal, if need be, could be taken to this Court.

The *Stainback* case was remanded with directions to dismiss the complaint, this Court saying:

"\* \* \* We think that where equitable interference with state and territorial acts is sought in federal courts, judicial consideration of acts of importance primarily to the people of a state or territory should, as a matter of discretion, be left by the federal courts to the courts of the legislating authority unless exceptional circumstances command a different course. We find no such circumstances in this case." (336 U. S. at pp. 383-384; 93 L.Ed. at p. 752)

What "circumstances command a different course" which was demanded by the plaintiffs below? They declared that the Supreme Court of Appeals of Virginia is powerless to act in this case. *Brown v. Saunders*, 159 Va. 28, 166 S. E. 105, was cited in support of such a declaration. A perusal of this decision is not even necessary to conclude that the appellees *do* have an adequate remedy in the courts of Virginia.

*Brown v. Saunders* was an original petition in the Supreme Court of Appeals of Virginia asserting that Chapter 23, Acts of Assembly of Virginia, 1932, which divided the state into congressional districts, was void as being in con-

flit with Section 55 of the State Constitution. The Court of Appeals, holding that the said chapter was invalid, said:

"When a State legislature passes an apportionment bill, it must conform to constitutional provisions prescribed for enacting any other law, and whether such requirements have been fulfilled is a question to be determined by the court when properly raised. *Smiley v. Holm*, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795; *Carroll v. Becker*, 285 U.S. 380, 52 S. Ct. 402, 76 L.Ed. 807; *Koenig v. Flynn*, 285 U.S. 375, 52 S. Ct. 403, 76 L.Ed. 805. If the validity of an apportionment act with respect to compliance with the constitutional requirements as to the manner of its adoption is subject to judicial review, it follows that if the provisions in question constitute limitations upon the legislative power of apportionment (as we think they do), then whether those limitations have been exceeded is likewise a question for judicial determination. The legal question involved is whether or not the act of the legislature is in conflict with the mandate of the Constitution." (159 Va. at pp. 35-36)

It is plain that the highest court in Virginia has recognized since 1932 that the question of the validity of an apportionment statute presents a judicial question under the Virginia Constitution. It is equally plain that the courts of this state will recognize, in light of *Baker v. Carr*, *supra*, the question of the validity of an apportionment statute under the Fourteenth Amendment. The Federal courts do not presume that "Virginia courts will not do their full duty in judging these statutes in light of state and federal constitutional requirements." *Harrison v. NAACP*, 360 U. S. 167, 178.

It is not here urged that the three-judge district court does not have jurisdiction under the Civil Rights Act, but

this fact of jurisdiction does not mean that the doctrine of abstention should not be applied. *Harrison v. NAACP*, *supra*.

A series of decisions rendered by this Court on June 8, 1959, convincingly demonstrates that the principle under consideration has not been enervated by the passage of time and that it applies with undiminished vitality to present day litigation. See *Harrison v. NAACP*, *supra*; *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25, *reh. den.* 360 U. S. 940; *Martin v. Creasy*, 360 U. S. 219; *County of Alleghany v. Mashuda Co.*, 360 U. S. 185.

In *Harrison v. NAACP*, *supra*, a suit challenging the validity and seeking to restrain enforcement of five statutes of the Commonwealth of Virginia, this Court held that the three-judge District Court which originally entertained the proceedings "should have abstained from deciding the merits of the issues tendered it, so as to afford the Virginia Courts a reasonable opportunity to construe" three of the statutes which the District Court had declared invalid and enforcement of which it had permanently enjoined. Commenting upon the propriety of this view, this Court observed:

"This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state governments . . . should at all times actuate the federal courts,' *Matthews v. Rodgers*, 284 U. S. 521, 525, as their 'contribution . . . in furthering the harmonious relation between state and federal authority. . . .' *Railroad Comm'n v. Pullman Co.*, 312 U. S. 496, 501. \* \* \* (360 U. S. at p. 176)

In *Louisiana Power & Light Co. v. Thibodaux*, *supra*, this Court reversed a judgment of the Court of Appeals for the Fifth Circuit for the Eastern District of Louisiana staying further proceedings in an expropriation suit, pending in the District Court, until the Supreme Court of Louisiana had been afforded an opportunity to interpret the Louisiana statute upon which the city's authority to expropriate was predicated. Particularly pertinent to the issue presented in the case at bar are certain portions of the dissenting opinion. Although expressing the view that the failure of the District Court to exercise jurisdiction was inappropriate under the circumstances of that case—primarily because no injunctive relief, which would have prohibited State officials from acting, was sought and because the case did not involve the potential friction which results when a federal court applies paramount federal law to strike down state action—the dissenting justices nevertheless fully acknowledged “the two recognized situations justifying abstention” and commented upon them in the following language:

“\* \* \* The doctrine of abstention originated in the area of the federal courts’ duty to avoid, if possible, decision of a federal constitutional question. This was *Railroad Com. v. Pullman Co.*, 312 US 496, 85 L.Ed. 971, 61 S.Ct. 643. \* \* \* Numerous decisions since then have sanctioned abstention from deciding cases involving a federal constitutional issue where a state court determination of state law might meet the issue or put the case in a different posture. \* \* \* Abstention has also been sanctioned on grounds of comity with the States—to avoid a result in ‘needless friction with state policies.’ The *Railroad Com. v. Pullman Co.*, 312 US 496, 500, 85 L. Ed. has upheld an abstention when the exercise by the federal court of jurisdiction would disrupt a state administrative process, *Burford v. Sun Oil*

Co., 319 US 315, 87 L.Ed. 1424, 63 S. Ct. 1098; *Pennsylvania v. Williams*, 294 US 176, 79 L.Ed. 841, 55 S.Ct. 380, 96 ALR 1166, interfere with the collection of State taxes. *Toomer v. Witsell*, 334 US 385, 392, 92 L.Ed. 1460, 1469, 68 S.Ct. 1156; *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 87 L.Ed. 1407, 63 S.Ct. 1070, or otherwise create needless friction by unnecessarily enjoining state officials from executing domestic policies, *Alabama Public Service Com. v. Southern R. Co.*, 341 U.S. 341, 95 L.Ed. 1002, 71 S.Ct. 762; *Hawks v. Hamill*, 288 U. S. 52, 77 L. Ed. 610, 53 S. Ct. 240." (360 US at pp. 32-33)

To the same effect is the decision in *Martin v. Creasy*, *supra*, in which a decision of the District Court for the Western District of Pennsylvania improvidently enjoining enforcement of the Pennsylvania Limited Access Highways Act of 1945 was reversed.

So far as counsel for appellants have been able to discover, *County of Alleghany v. Mashuda Co.*, *supra*, represents the only case decided contemporaneously with *Harrison v. NAACP*, *supra*, in which this Court held that a District Court impermissibly abstained from exercising its properly invoked jurisdiction. In that case, as this Court emphasized in the initial paragraph of its opinion, the exercise of such jurisdiction under the circumstances of that case, "*would not entail the possibility of a premature and perhaps unnecessary decision of a serious federal constitutional question, would not create the hazard of unsettling some delicate balance in the area of federal-state relationships, and would not even require the District Court to guess at the resolution of uncertain and difficult issues of state law.*" (Italics supplied.) Distinguishing the situation there presented from those existing in prior cases in which abstention had been approved, this Court noted:

"This Court has sanctioned a federal court's postponement of the exercise of its jurisdiction in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law. \* \* \* But there are no federal constitutional questions raised in this case.

"This Court has also upheld an abstention on grounds of comity with the States when the exercise of jurisdiction by the federal court would disrupt a state administrative process; *Burford v. Sun Oil Co.*, 319 U.S. 315; *Pennsylvania v. Williams*, 294 U. S. 176, interfere with the collection of state taxes, *Toomer v. Witsell*, 344 U.S. 385, 392; *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293, or otherwise create a needless friction by unnecessarily enjoining state officials from executing domestic policies, *Alabama Public Service Comm'n v. Southern R. Co.*, 341 US 341; *Hawks v. Hammill*, 288 US 52. But adjudication of the issues in this case by the District Court would present no hazard of disrupting federal-state relations. The respondents did not ask the District Court to apply paramount federal law to prohibit state officials from carrying out state domestic policies, nor do they seek the obvious irritant to state-federal relations of an injunction against state officials. The only question for decision is the purely factual question whether the County expropriated the respondents' land for private rather than for public use. \* \* \*" (360 US at pp. 188-89-90) (Italics supplied)

See, also, *Clay v. Sun Ins. Office*, 363 U. S. 207 and *United Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U. S. 134.

An examination of the facts and of the state statutes involved in such cases as *Government & C. E. O. C., CIO v. Windsor*, 353 U. S. 364; *Alabama Public Service Commission v. Southern R. Co.*, 341 U. S. 341, and *Albertson v. Millard*, 345 U. S. 242, reveal that the doctrine of absten-

tion may be applied even though the provisions of a state statute may appear to be free of doubt and ambiguity. The dissenting justices in *Louisiana Power and Light Co. v. Thibodaux*, *supra*, recognized this when they stated that the doctrine of abstention may be applied to avoid "the hazard of unsettling some delicate balance in the area of federal-state relationships." Once again, it is hard to imagine a more delicate subject with which to deal than the apportionment statutes of a state.

While, of course, it may not be said that Sections 24-12 and 24-14 of the Code of Virginia, as amended, present problems of statutory construction while standing alone, this may not be said for the provision of the Virginia Constitution pursuant to which such sections were enacted. This provision reads as follows:

"§ 43. Apportionment of Commonwealth into senatorial and house districts. The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

The present Section 43 was ratified on June 19, 1928 and was rewritten merely to bring it up to date. The original section as found in the Virginia Constitution of 1902 reads as follows:

"§ 43. Apportionment of State into senatorial and house districts. The apportionment of the State into senatorial and house districts, made by the acts of the General Assembly, approved April the second, nineteen hundred and two, is hereby adopted; but a re-apportionment may be made in the year nineteen hundred and six, and shall be made in the year nineteen hundred and twelve, and every tenth year thereafter."

No case, other than *Alexandria v. Alexandria County*, 117 Va. 230, 84 S. E. 630, which dealt with an annexation statute and its possible conflict with Section 43, has been found involving this constitutional provision. What is its proper construction when considering apportionment statutes enacted pursuant thereto? What factors must the General Assembly of Virginia consider in passing apportionment statutes required by the mandate of Section 43? No guides or standards are provided. Compare, Section 55 of the Virginia Constitution, dealing with the apportionment of the State into congressional districts, wherein it is provided that the districts "shall be composed of contiguous and compact territory containing as nearly as practical, an equal number of inhabitants."

Section 43 provides only that "reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter." This requires the members of the first regular session of the General Assembly meeting after the taking of each ten-year federal census to reapportion the State. Does this mean that population alone must be considered? Is precise mathematical equality required by Section 43? Or may the General Assembly recognize historical, political and geographical subdivisions as well as such standards as community of interests when redistricting house and senate seats?

The answers to the above questions may be determined authoritatively and finally *only* by state courts. "No matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination." *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496. To the same effect, *Chicago v. Fieldcrest Dairies*, 316 U. S. 168.

In *Leiter Minerals Inc. v. United States*, 352 U. S. 220,

229, this Court said that federal courts should not decide constitutional questions "on the basis of preliminary guesses regarding local law." *Spector Motor Service v. McLaughlin*, 323 U. S. 101.

In passing the apportionment statutes of 1962, has the General Assembly followed the mandate of Section 43 of the Virginia Constitution? An answer requires an interpretation of Section 43, and it is possible for the state courts of Virginia to hold that the answer is in the negative. In such event, a decision on the serious federal constitutional question brought before this Court would be unnecessary.

One of the most sound and logical reasons for invoking the doctrine of abstention is that an authoritative construction of a state statute, *a fortiori*, a provision of a state constitution, may void the necessity for determining a federal constitutional question. Some of the justices of this Court, who have expressed the fear in some dissenting opinions that a majority of the Court has unjustifiably broadened the doctrine of abstention, recognize that the doctrine of abstention should be applied in such cases as this. It was said in the dissenting opinion in *Louisiana Power and Light Co. v. Thibodaux*, *supra*, that the doctrine of abstention required the parties to repair to the state courts in order to avoid "a premature and perhaps unnecessary decision of a serious federal constitutional question" (360 U. S. at p. 32). To the same effect, see the majority opinion in *Harrison v. NAACP*, *supra*, wherein Mr. Justice Harlan, speaking for the Court, said that while the doctrine of abstention does not, of course, "involve the abdication of federal jurisdiction" it should always be applied to "avoid in whole or in part the necessity for federal constitutional adjudication" (360 U. S. at p. 177).

In this connection, it is of interest to note that there is

now pending in the Circuit Court of the City of Richmond, Virginia, a case with Fourteenth Amendment issues identical to the ones now before this Court. The case is entitled, *Tyler v. Davis*, Chancery Docket No. 7946-C, and copies of the Bill of Complaint, Answer and Cross-Bill and Answer to Cross-Bill are attached as Appendix II to this brief.

The intervenors' complaint in the case at bar was filed in the court below by voters residing in the City of Norfolk who sued "on their own behalf and on behalf of all other voters similarly situated in the Commonwealth of Virginia" (R. pp. 32 and 35). The Complaint pending in the state court likewise was brought by voters residing in the City of Norfolk on behalf of themselves and others similarly situated (see Appendix II). The appellees in this case and the defendants in the case of *Tyler v. Davis, supra*, are the same, namely, the state election officials and the local election officials of Norfolk.

The plaintiffs in the state case introduced the same evidence that is now before this Court. The defendants, the appellants here, also introduced the same evidence now before this Court, together with certain exhibits and testimony of experts showing a rational and practical justification for exclusion of the military and the military related population in the City of Norfolk and Arlington and Fairfax counties by reason of the fundamentally transient nature, the high mobility rate and the essentially non-citizen character of such population.

This state case of *Tyler v. Davis* has been argued orally by counsel and briefs have been submitted. The Circuit Court of the City of Richmond clearly has before it the question of whether Sections 24-12 and 24-14 of the Code of Virginia violate either Section 43 of the Constitution of Virginia or the Fourteenth Amendment to the Constitution

of the United States. A decision on these questions may well be rendered by the state court prior to the argument of the case at bar before this Court. An appeal from a decision of the Circuit Court of the City of Richmond may be taken to the Supreme Court of Appeals of Virginia and then to this Court, if a federal question under the Fourteenth Amendment remains.

Under all of the circumstances described above, the doctrine of abstention should be invoked, for it would appear from the cases hereinabove cited that this Court has consistently applied this doctrine either to avoid friction in the area of federal-state relationships or to avoid a premature or unnecessary federal constitutional question.

## II.

### Sections 24-12 and 24-14 of the Virginia Code Are Not Violative of the Fourteenth Amendment to the Constitution of the United States

The case at bar is but one of a multitude of reapportionment suits which have been instituted in both State and Federal courts in the wake of the historic decision of this Court in *Baker v. Carr*, 369 U. S. 186. In that case, certain citizens of the State of Tennessee instituted a civil action to redress an alleged deprivation of federal constitutional rights, asserting that the then existing Tennessee statute apportioning the members of the General Assembly of Tennessee among the State's political subdivisions denied plaintiffs the equal protection of the laws accorded them by the Fourteenth Amendment by virtue of the debasement of their votes. As various courts have subsequently had occasion to emphasize, the decision in *Baker* is as important for what was *not* decided as for what was decided. In this connection, the clearest expression of the scope of that decision—as well as the most forceful restatement of numerous well settled

precedents left undisturbed by it—is that of Mr. Justice Stewart, who concurred in the majority opinion with the following declaration (369 U. S. at 265-266):

"The Court today decides three things and no more: (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) . . . that the appellants have standing to challenge the Tennessee apportionment statutes.' . . .

"The complaint in this case asserts that Tennessee's system of apportionment is utterly arbitrary—without any possible justification in rationality. The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject. Contrary to the suggestion of my Brother Harlan, the Court *does not say or imply* that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter.' *Infra*, p. 752. The Court *does not say or imply* that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper and customs of its people.' *Infra*, pp. 752, 753. And contrary to the suggestion of my Brother Douglas, the Court *most assuredly does not decide* the question, 'may a State weight the vote of one county or one district more heavily than it weights the vote in another?' *Supra*, p. 701.

"In *MacDougall v. Green*, 335 U.S. 281, 93 L. ed 3, 69 S. Ct. 1, the Court held that the Equal Protection Clause does not 'deny a State the power to assure a proper diffusion of political initiative *as between its thinly populated counties and those having concentrated masses*, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.' 335 U.S. at 284. In case after case arising under the Equal Protection

Clause the Court has said what it said again only last Term—that 'the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.' *McGowan v. Maryland*, 366 U.S. 420, 425, 6 L. ed 2d 393, 399, 81 S Ct 1101. In case after case arising under that Clause we have also said that 'the burden of establishing the unconstitutionality of a statute rests on him who assails it.' *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584, 79 L ed 1070, 1072, 55 S Ct 538.

*"Today's decision does not turn its back on these settled precedents. I repeat, the Court today decides only: (1) that the District Court possessed jurisdiction of the subject matter; (2) that the complaint presents a justiciable controversy; (3) that the appellants have standing."* (Italics supplied)

In the landmark opinion in *Baker*, the individual members of this Court stressed various aspects of that case which serve to distinguish it completely from the case at bar. Speaking for the Court, Mr. Justice Brennan pointed out that "Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties subject only to minor qualifications," that between 1901 and 1961 there had been no decennial reapportionment in compliance with the constitutional scheme even though Tennessee had experienced "substantial growth and redistribution of her population" and that the substance of the appellant's claim was that the existing (1901) reapportionment statute manifested an "irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population." *Id.* at 189-192, 207. *No such situation exists in the case at bar.*

Commenting upon the "gross disproportion" of representation mentioned above, Mr. Justice Douglas noted the assertion that "a single vote in Moore County, Tennessee, is worth 19 votes in Hamilton County, that one vote in Stewart or in Chester County is worth eight times a single vote in Shelby or Knox County." *Id.* at 249. *No comparable situation exists, or is alleged to exist, in the case at bar.*

With respect to the operation of the Tennessee reapportionment statute as applied to rural and urban areas of the State, Mr. Justice Clark observed that the statute "discriminates horizontally creating gross disparities between rural areas themselves as well as between urban areas themselves, still maintaining the wide vertical disparity already pointed out between rural and urban." *Id.* at 256. He also emphasized the "frequency and magnitude of the inequalities" in the Tennessee districting and the circumstances that the people of Tennessee would be "saddled with the present discrimination in the affairs of their State government" in the absence of federal judicial intervention. *Id.* at 259. *No such situation exists, or is alleged to exist, in the case at bar.*

On the contrary, the claim of the unconstitutionality of the Virginia reapportionment statutes set up in plaintiffs' complaint and sought to be established by plaintiffs' proof is predicated *exclusively* upon numerical disparities which are alleged to exist among the populations embraced in certain of the House and Senate districts established by Sections 24-12 and 24-14 of the Virginia Code. In light of these alleged disparities, the majority of the court below found "unconstitutional, invidious discrimination" adverse to Arlington County, Fairfax County and the City of Norfolk. They held that the appellees had proved inequities on the basis of population and that the appellants had not carried the burden of adducing evidence which might explain

such inequities. By this holding, the majority not only ignored the evidence introduced by the appellants in the court below, but also refused to apply the principle, long established by this Court, that "a statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 366 U. S. 420, 426; *Baker v. Carr*, *supra*.

As indicated by Plaintiffs' Exhibit "D" to Complaint (R. 22, 24), the largest House district in Virginia on a population per representative basis is District 27 (Fairfax County, Falls Church and Fairfax City) which has a population of 95,064 for each of its three members of the House, while the smallest such district on a population per representative basis is District 64 (Shenandoah County) which has a population of 21,825 for its one member of the House—a population variance ratio of 4.36 to 1. See, Plaintiffs' Exhibit 15 (R. 197). As indicated by Plaintiffs' Exhibit "C" to Complaint (R. 18), the largest Senate district on a population per representative basis is District 9 (Arlington County) which has a population of 163,401 for its one member of the Senate, while the smallest such district on a population per representative basis is District 7 (Brunswick, Lunenburg and Mecklenburg Counties) which has a population of 61,730 for its one member of the Senate—a population variance ratio of 2.65 to 1. See, Plaintiff's Exhibit 15 (R. 197).

As counsel for appellants will demonstrate in this brief, these population variance ratios are well within the limits allowable under the equal protection standard of the Fourteenth Amendment as interpreted and applied in a host of decisions rendered by State and Federal courts since the advent of *Baker*. However, at the inception of any consideration of the population variances which forms the entire

substance of plaintiff's case, counsel for appellants submit that the above-mentioned ratios do not constitute the appropriate ratios by which the validity of the Virginia reapportionment statute must be judged.

As indicated, the most excessive population variance ratio under the Virginia reapportionment system with respect to the House of Delegates is 4.36 to 1, and the most excessive population variance ratio under the Virginia reapportionment system with respect to the Senate is 2.65 to 1. These ratios are based upon population figures *which include military personnel, their wives and children*, i.e., military related population. It is the position of the appellants (1) that such military related population may properly be excluded in the determination of the number of inhabitants of a House or Senate district for purposes of representation in the General Assembly of Virginia and in establishing the resulting population per representative figure in the House and Senate and (2) exclusion of such military related population substantially reduces the population variance ratios under consideration.

As a prelude to a consideration of this contention, counsel for appellants wish to reemphasize the firmly precedented rule that a legislative classification assailed under the Fourteenth Amendment will not be invalidated by the judiciary if any state of facts reasonably may be conceived which would sustain it. Proof that such state of facts was actively contemplated by the Legislature is wholly unnecessary. This general principle is well stated in 12 Am. Jur. 214. Presumptions and Burden of Proof, Section 521, in the following language:

"In accordance with the basic rules of constitutional law underlying court review of legislation assailed as

unconstitutional, in those cases in which laws are attacked as violating the equality requirements of the Federal and state Constitutions *there is a presumption in favor of a legislative classification*, of the reasonableness and fairness of legislative action, and of legitimate grounds of distinction, if any such grounds exist, on which the legislature acted. Hence, when the classification in a law is called in question, *if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.*" (Italics supplied)

The above-stated principle has been repeatedly affirmed by this Court. One of the most recent assertions of the rule in a case not involving legislative reapportionment appears in *McGowan v. Maryland*, *supra*, in which case the Court observed (366 U. S. at 425-426):

"State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. *A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.* See *Kotch v. Board of River Port Pilot Comrs.*, 330 US 552, 91 L ed 1093, 67 S Ct 910; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 US 580, 79 L ed 1070, 55 S Ct 538; *Lindsley v. Natural Carbonic Gas Co.*, 220 US 61, 55 L ed 369, 31 S Ct 337, Ann Cas 1912C 160; *Atchison, T. & S. F. R. Co. v. Matthews*, 174 US 96, 43 L ed 909, 19 S Ct 609." (Italics supplied)

Moreover, in *Morey v. Doud*, 354 U. S. 457, 463-464, the rules for testing an alleged discrimination under the Fourteenth Amendment were summarized in the following language:

“1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. *A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.* 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. *One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.*” (Italics supplied)

That these rules apply with equal vitality in reapportionment cases is evidenced by the previously quoted declaration of Mr. Justice Stewart in *Baker*. *Ante*, p. 30. See, also, *Maryland Committee for Fair Representation v. Tawes*, 180 A. (2d) 656, 668; *Jackman v. Bodine*, 188 A. (2d) 642, 647.

If the General Assembly of Virginia could reasonably exclude military related population in determining the number of inhabitants of each House and Senate district for purposes of representation, and if the Virginia reapportionment system—viewed in the light of such exclusion—effects no invidious discrimination against the citizens of any district, it is manifest from the above-cited authorities that the challenged statutes must be sustained.

Initially in this connection, it should be noted that the constitutions of Alaska, Washington and Wisconsin contain express provisions for the exclusion of soldiers, sailors and officers in the military service, or non-civilian inhabitants, in determining the population of those

States for representative purposes. See, Constitution of Alaska, Article VI, Sections 4 and 5; Constitution of Washington, Article II, Section 3; Constitution of Wisconsin, Article IV, Section 3. Moreover, prior to its amendment in 1948, the constitution of South Dakota made similar provision for the exclusion of military personnel for such purposes. See, Constitution of South Dakota, Article III, Section 5. It is thus clear that firm historical precedent exists for the exclusion here under discussion.

Further in this connection, Section 24 of the Constitution of Virginia provides that "no officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to right of suffrage in the State, or in any county, city or town thereof, by reason of being stationed therein; . . ." Counsel for appellants assert that an obvious, rational and practical justification for the exclusion of military related population exists by reason of the fundamentally transient nature of such population, the high mobility rate of such population and the essentially non-citizen character of such population. Certainly, such an exclusion is not unreasonable, and counsel for appellants wish to emphasize that *no evidence whatever* was introduced on behalf of plaintiffs in the court below which even remotely tended to demonstrate any aspect of unreasonableness in the exclusion under discussion. This want of proof is especially significant in light of the principle that "the burden of establishing the unconstitutionality of a statute rests on him who assails it" (*Baker v. Carr, supra*, at 266) and that one who assails a statutory classification under the Fourteenth Amendment "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." *Morey v. Doud, supra*, at 464. The absence of any such evidence on behalf of plaintiffs surely precludes any

judicial determination that the exclusion under consideration is wholly unreasonable and therefore antagonistic to the Fourteenth Amendment.

Certainly, it is within the competency of a Legislature confronted with so complex a problem as decennial reapportionment, to insure that certain areas of a State shall not be irrationally favored by reason of massive infusions of transient, mobile, non-citizen military related population. As indicated by Defendants' Exhibit 2 (R. 250), the total number of male military personnel residing in Arlington County in 1960 was 10,628. Since many men in the armed forces are married and have children, it is surely reasonable to multiply the number of males by  $2\frac{1}{2}$  to obtain the total figure for military related population, i.e., military personnel, their wives and children, residing in Arlington County. Multiplication of the figure 10,628 by the figure  $2\frac{1}{2}$  produces a total of 26,570. As previously indicated, the 1960 census figure for Arlington County showed a population of 163,401. Subtracting the former figure from the latter leaves 136,831 as the correct population figure for Arlington County to be considered for reapportionment purposes. Utilization of the figure 136,831 in determining the most excessive population variance ratio in Virginia with respect to the Senate establishes a ratio of 2.22 to 1 rather than 2.65 to 1.

Similar adjustment of the population figures of Fairfax County (including the cities of Falls Church and Fairfax City) to exclude military related population establishes that Fairfax County would have 76,980 persons per delegate, rather than 95,064 persons per delegate as determined on the basis of population figures which include military related population. Utilizing the corrected figure of 76,980 for the purpose of determining the most excessive population vari-

ance ratio with respect to the House of Delegates of Virginia establishes a ratio of 3.53 to 1 rather than 4.36 to 1.

With these ratios in mind, we now canvass the various reapportionment cases decided by State and Federal courts since the advent of *Baker*. Initially, we shall consider those cases in which the apportionment systems of certain States have been declared unconstitutional.

In *Sims v. Frink*, 208 F. Supp. 431, a federal District Court invalidated the apportionment system of *Alabama*. The population variance ratio with respect to the House exceeded 15 to 1, while that with respect to the Senate exceeded 20 to 1.

In *Lisco v. McNichols*, 208 F. Supp. 471, a federal District Court expressed disapproval of the *Colorado* apportionment system. The population variance ratio with respect to the House was 8 to 1, while that with respect to the Senate was over 7 to 1. See, also, *Stein v. The General Assembly of the State of Colorado*, ..... Colo. ...., 374 P. (2d) 66.

In *Sincock v. Duffy*, 215 F. Supp. 169, a federal District Court invalidated the *Delaware* apportionment system. Prior to the 1963 amendments to the relevant Delaware statutes, the population variance ratio with respect to the House was 35 to 1, while that with respect to the Senate was 21 to 1. After enactment of the 1963 amendment, the population variance ratio with respect to the House was still over 12 to 1, while that with respect to the Senate was still over 15 to 1.

In *Toombs v. Fortson*, 205 F. Supp. 248, a federal District Court invalidated the *Georgia* apportionment system. The population variance ratio with respect to the House was 98 to 1, while that with respect to the Senate was over 40 to 1.

In *Harris v. Shanahan*, District Court of Shawnee,

County, Kansas, No. 90976, the District Court invalidated the *Kansas* reapportionment system. The population variance ratio with respect to the House was over 8 to 1, while that with respect to the Senate was over 19 to 1.

In *Davis v. Synhorst*, 217 F. Supp. 492, a federal District Court invalidated the *Iowa* apportionment system. The population variance ratio with respect to the House was 18 to 1, while that with respect to the Senate was 9 to 1.

In *Scholle v. Hare*, 367 Mich. 176, 116 N. W. (2d) 350, the Supreme Court of Michigan invalidated the *Michigan* apportionment system with respect to the Senate. The population variance ratio with respect to the Senate was over 12 to 1.

In *Moss v. Burkhardt*, 207 F. Supp. 885, a federal District Court invalidated the *Oklahoma* apportionment system. The population variance ratio with respect to the House was 14 to 1, while that with respect to the Senate was 26 to 1.

In *Sweeney v. Notte*, ..... R. I. ...., 183 A. (2d) 296, the Supreme Court of Rhode Island invalidated the *Rhode Island* apportionment system with respect to the House. The population variance ratio with respect to the House was 22 to 1.

In *Mikell v. Roussau*, ..... Vt. ...., 183 A. (2d) 817, the Supreme Court of Vermont invalidated the *Vermont* apportionment system with respect to the Senate. The population variance ratio with respect to the Senate was over 6 to 1.

In *Thigpen v. Meyers*, 211 F. Supp. 826, a federal District Court declared invalid the *Washington* apportionment system. The population variance ratio with respect to the House was 4.65 to 1, while that with respect to the Senate was 7.25 to 1.

The population variance ratios under consideration in the above canvassed cases were variously described by the par-

ticular courts involved as "gross and glaring" disparities, *Lisco v. McNichols*, *supra* at 474; "disparities . . . of . . . a startling nature," *Sincock v. Duffy*, *supra* at 184; "great disparities" and "gross disparities" giving rise to "discrimination so excessive as to be invidious," *Toombs v. Fortson*, *supra* at 254, 256; "severe inequalities" in representation, *Davis v. Synhorst*, *supra* at 499; "grossly and egregiously" disproportionate ratios, *Moss v. Burkhardt*, *supra* at 894; "grossly unequal" and "sharply disproportionate" representation, *Sweeney v. Notte*, *supra* at 301. When these ratios, thus characterized, are compared with those which exist under the Virginia reapportionment system, it is manifest that not even the most unrestrained and partisan imagination could suggest that the above cited cases support, much less compel, invalidation of the Virginia statutes in question.

We next examine those cases in which the reapportionment systems of various States have been sustained against attack under the Fourteenth Amendment in the wake of *Baker*. The ensuing analysis is also made with an eye to the fact that the most excessive population variance ratio in Virginia with respect to the House of Delegates is 4.36 to 1 based upon population figures which *include* military related population, and only 3.53 to 1 based on figures which *exclude* such population; while the most excessive population variance ratio in Virginia with respect to the Senate is 2.65 to 1 based upon population figures which *include* military related population, and only 2.22 to 1 based upon figures which *exclude* such population.

In *Sobel v. Adams*, 208 F. Supp. 316, a three-judge District Court for the Southern District of Florida, sustained *on the merits* the validity of the reapportionment scheme embodied in certain proposed amendments to the Florida Constitution to be submitted to the people for ratification.

Under the proposed amendments, each county in Florida would be given one representative in the House of Representatives of the State Legislature, the remaining members to be allocated on the basis of representative ratios. The Senate would consist of forty-six members, each representing a district. Each of the twenty-four most populous counties in the State would constitute a Senate district, the other twenty-two districts to be created from the remaining forty-three counties.

Under this redistricting system, the largest population per representative in the Florida House of Representatives was 62,336, while the smallest population per representative in any district was 2,868—a population variance ratio of 21.7 to 1 between such districts. Similarly, the largest Senate district in Florida based on population contained 935,047 inhabitants, while the smallest Senate district in Florida contained 14,971 inhabitants—a population variance ratio of 62.4 to 1 between such Senate districts. Although the proposed amendments to the Florida Constitution were not adopted, the three-judge District Court, *pointing out that it could not be said that the proposed amendments reached apportionment equality on a strict basis of population*, unanimously sustained the reapportionment scheme contemplated by the proposed amendments.

In *Caesar v. Williams*, ..... Idaho ....., 371 P. (2d) 241, the Supreme Court of Idaho sustained *on the merits* the validity of the reapportionment scheme with respect to the House embraced in the constitution and statutes of Idaho. The Idaho constitution decrees that each county in the State should have one representative in the House, the remaining representatives to be allocated on the basis of certain population ratios prescribed by statute. Under this redistricting system, the largest House district in Idaho based on popula-

tion contained 16,719 inhabitants, while the smallest House district contained only 917 inhabitants—a population variance ratio of over 18 to 1. Pointing out that the constitutional requirement of one representative for each county, superimposed on the population requirement of the statute would lead to the discrepancies between the number of people who would be represented by each individual representative in the House on a purely numerical basis, the Supreme Court of Idaho declared that the disparity there under consideration was not so clearly violative of the equal protection standard as to be unconstitutional.

In *Daniel, et al. v. Davis, et al.*, ..... F. Supp. .... (decided June 28, 1963), a three-judge District Court for the Eastern District of Louisiana sustained *on the merits* a recently enacted reapportionment plan for the House of Representatives of Louisiana. Under this system, one representative in the House was awarded each of the 63 parishes in Louisiana (exclusive of Orleans) and one to each of the 17 wards in the city of New Orleans. The remaining 25 seats in the House were allocated on the basis of a table of priority established in accordance with the Method of Equal Proportions distribution formula. Although this redistricting scheme produced a maximum population variance ratio of 8 to 1 in the House, it was held to be consistent with the requirements of the Fourteenth Amendment.

In *Maryland Committee for Fair Representation v. Tawes*, 229 Md. 406, 184 A. (2d) 715, probable jurisdiction noted ..... U. S. ...., the Court of Appeals of Maryland sustained *on the merits* the validity of the reapportionment scheme embraced in the Maryland constitution. In substance, the Maryland reapportionment scheme contemplates a House structured on the basis of population and a Senate constituted upon the basis of geographical areas or districts

without regard to population. Under this redistricting system, the most excessive population variance ratio with respect to the Senate of Maryland was 32 to 1, while that with respect to the House (supposedly constituted on the basis of population) was over 5 to 1. In spite of these numerical disparities, the Court of Appeals of Maryland sustained the validity of the Maryland reapportionment system.

In *Jackman v. Bodine*, 78 N. J. Super. 414, 188 A. (2d) 642, the Superior Court of New Jersey sustained *on the merits* the reapportionment scheme embodied in the New Jersey constitution. Under New Jersey law, the Senate is composed of one Senator from each county regardless of population, while the House is apportioned among the counties on a population basis, with each county entitled to at least one member of the House, the total House membership not to exceed sixty members. Under this redistricting system, the largest New Jersey Senate district in population contained 923,545 inhabitants, while the smallest such district contained only 48,555—a population variance ratio of 19 to 1 between such districts. Notwithstanding such disparity, the New Jersey redistricting system was held to be compatible with the requirements of the Fourteenth Amendment.

In *W.M.C.A. Inc. v. Simon*, 208 F. Supp. 368, probable jurisdiction noted ..... U. S. ...., a three-judge District Court for the Southern District of New York sustained *on the merits* the validity of the reapportionment scheme embodied in the New York Constitution. Under New York law, every county in the State (with the exception of Hamilton County which shares one Assemblyman with Fulton County) is entitled to one representative in the New York Assembly. Senate districts for representation are created

on the basis of citizen population, excluding aliens, with certain limitations upon the number of Senators any county may have.

Under this redistricting system, the largest New York Assembly district in population contained 222,261 inhabitants, and the smallest Assembly district in population contained 15,044 inhabitants—a population variance ratio of 14.7 to 1 between these districts. Similarly, the largest Senate district in New York based on population contains 666,784 inhabitants, while the smallest Senate district in New York based on population contains 168,390 inhabitants—a population variance ratio of 3.96 to 1. These New York redistricting provisions were sustained by a unanimous court in a decision which is thoroughly in accord with that of this Court in *Baker*.

In *Nolan v. Rhodes*, ..... F. Supp. .... (decided June 12, 1963), a three-judge District Court for the Southern District of Ohio sustained *on the merits* the validity of the reapportionment scheme embodied in the Ohio Constitution. Under Ohio law, the Senate is apportioned on the basis of population and the House on the basis of both area and population, with each county entitled to one representative regardless of population. Although this redistricting plan produced a maximum population variance ratio of almost 15 to 1 with respect to the House, the system was sustained against attack under the Fourteenth Amendment.

As previously pointed out, none of the post-*Baker* decisions in which the reapportionment systems of various States have been declared unconstitutional support, much less compel, invalidation of the Virginia statutes under consideration. By contrast, counsel for defendants now submit that the post-*Baker* decisions canvassed immediately above—in which the apportionment systems of Florida,

Idaho, Louisiana, Maryland, New Jersey, New York, and Ohio were declared constitutional—do support, and (if unreversed) *indeed compel*, complete validation of the Virginia statutes. If a State reapportionment system which gives rise to extreme population variance ratios of .624 to 1 (Florida), 18 to 1 (Idaho), 8 to 1 (Louisiana), 32 to 1 (Maryland), 19 to 1 (New Jersey), 14.7 to 1 (New York) and 15 to 1 (Ohio) are *not* invidiously discriminatory under the Fourteenth Amendment, then a State reapportionment system which gives rise to an extreme population variance ratio of only 4.36 (or 3.53) to 1 cannot, *a fortiori*, be invidiously discriminatory.

Moreover, Defendants' Exhibit No. 5 (R. 266), which was prepared by the Bureau of Public Administration of the University of Virginia, establishes the rank and order of Virginia in comparison with other States, based upon population, after the challenged statutes were enacted by the General Assembly of Virginia. This exhibit discloses that Virginia ranks 8th in the United States in fairness of representation, *based solely upon population figures which include military related population*, subsequent to the enactment of the 1962 redistricting statutes. In none of those States ranking higher than Virginia on this index has a suit attacking reapportionment been successfully maintained. This exhibit also discloses that Florida ranks 46th, Idaho ranks 40th, New Jersey ranks 26th, Ohio ranks 18th and New York ranks 13th in fairness of representation based solely on population. If a reapportionment system which causes a State to rank only 46th, or 40th, or 26th, or 18th, or 13th, in fairness of representation, based solely on population, is *not* invidiously discriminatory, then a reapportionment system which causes a State to rank 8th (Virginia) in fairness of representation, based solely on population, cannot, *a fortiori*, be invidiously discriminatory.

Surely, it cannot possibly be the law that the reapportionment systems of seven States which give rise to extreme population variance ratios ranging from 8 to 1 (Louisiana) to 62.4 to 1 (Florida) are *not* invidiously discriminatory under the Fourteenth Amendment, but that a State reapportionment system which gives rise to an extreme population variance ratio of only 4.36 (or 3.53) to 1 (Virginia) is invidiously discriminatory. Surely, it cannot possibly be the law that the reapportionment systems of seven States which causes such States to rank from 13th (New York) to 46th (Florida) in the United States in fairness of representation based solely on population are *not* invidiously discriminatory, but that a State reapportionment system which causes a State to rank 8th (Virginia) in the United States in fairness of representation based solely on population is invidiously discriminatory. If such is law, then the decisions of the Federal courts in reapportionment cases will themselves become a "topsy-turvical of gigantic proportions," and those decisions will necessarily create a *judicial* "crazy-quilt without rational basis." *Baker v. Carr, supra*, at 254.

In addition, Defendants' Exhibit No. 3 (R. 252), indicates that, in the Electoral College, the smallest population per elector exists in the State of Alaska which has 88,722 inhabitants per elector, while the largest population per elector exists in California which has 392,930 inhabitants per elector—a population variance of 4.4 to 1 as between California and Alaska. As previously pointed out, the most excessive population variance ratio in the House of Delegates of Virginia, based upon population figures which include military related population, is 4.36 to 1, while the most excessive population variance ratio in the Senate of Virginia, based upon such population figures, is 2.65 to 1. Thus, it is clear that, even including military related popu-

lation, no population variance ratio in either the House of Delegates or Senate of Virginia exceeds the population variance ratio which exists in the Electoral College. Counsel for appellants submit that no invidious discrimination antagonistic to the Fourteenth Amendment can exist in a State reapportionment system which contains no population variance ratio which exceeds that of the Electoral College.

The recent decision of this Court in *Gray v. Sanders*, ..... U. S. ...., decided March 18, 1963, does not express a contrary view. In that case, this Court had occasion to review an order of the three-judge District Court for the Northern District of Georgia, one aspect of which held that the use of the county unit system, in counting the votes in a statewide election was permissible "if the disparity against any county is not in excess of the disparity that exists against the state in the most recent electoral college allocation." See, *Sanders v. Gray*, 203 F. Supp. 158, 170. Holding that the analogy to the Electoral College was inapposite to the situation presented in that case, this Court pointed out (..... U. S. at .....):

"Nor does the question here have anything to do with the composition of the state or federal legislature. And we intimate no opinion on the constitutional phases of that problem beyond what we said in *Baker v. Carr*, *supra*. The present case is only a voting case. (Italics supplied)

Similar emphasis was also placed upon the nature of the question there presented by Mr. Justice Stewart, with whom Mr. Justice Clark joined, in his dissenting opinion (..... U. S. at .....):

"This case does not involve the validity of a State's apportionment of geographic constituencies from which representatives to the State's legislative assembly are

*chosen, nor any of the problems under the Equal Protection Clause which such litigation would present. We do not deal here with 'the basic ground rules implementing Baker v. Carr.' This case, on the contrary, involves statewide elections of a United States Senator and of state executive and judicial officers responsible to a statewide constituency. Within a given constituency, there can be room for but a single constitutional rule—one voter, one vote."* (Italics supplied)

At this point, it may be well to mention that no "county unit" or other "weighted" voting procedures exist in Virginia. In all statewide elections for United States Senator or State executive officials responsible to a statewide constituency, the constitutional rule of "one voter, one vote" enunciated in *Gray v. Sanders, supra*, prevails and always has prevailed. With respect to the applicability of the electoral college analogy to the problem of the reapportionment of State legislatures, counsel for appellants would call the Court's attention to the view expressed by Mr. Justice Harlan in his dissenting opinion in *Gray v. Sanders, supra*, at -----:

"One need not close his eyes to the circumstance that the Electoral College was born in compromise, nor take sides in the various attempts that have been made to change the system, in order to agree with the court below that it 'could hardly be said that such a system used in a state among its counties, assuming rationality and absence of arbitrariness in end result, could be termed invidious.'"

The position taken by Mr. Justice Harlan was adopted by the three-judge District Court for the Northern District of Georgia with respect to the State legislative reapportionment in *Toombs v. Fortson, supra*. See, III Constitutional

Decisions on Legislative Apportionment (National Municipal League), *Toombs v. Fortson*, p. 6. In that case, the District Court declared:

*"Whatever comports with the national legislative standard, assuming rationality and absence of arbitrariness in end result, can hardly be termed invidious. Cf. discussion in Sanders v. Gray, N.D. Ga., 1962, 203 F. Supp. 158, 169, of the federal electoral college system as a standard in determining the legality of the Georgia County Unit System. The national system of one body of the legislative branch being based on population and one on geography has withstood the test of time. It is fundamental in a government founded and maintained on a deliberate system of checks and balances. It protects the minority from the excesses of the majority, and is one of the principal reasons for a bicameral as distinguished from a unicameral legislature. A majority of the United States Senate is elected by approximately seventeen percent of the population of the United States, and this is not substantially out of line with the majority plan where approximately fifteen percent of the population of Georgia would elect the majority of the Georgia House. Of course, it may be argued that the extreme disparity between the largest and smallest counties in Georgia would violate the national standard but we are unaware of any authority that requires a ruling that a legislature so constituted would violate the plaintiffs' constitutional rights."* (Italics supplied)

Furthermore, in his dissenting opinion, Mr. Justice Harlan pointed out that:

*"The disproportions in the Georgia County Unit System are indeed not greatly out of line with those existing under the Electoral College count for the Presidency. The disparity in population per Electoral Col-*

lege vote between New York (the largest State in the 1960 census) and Alaska (the smallest) was about 5 to 1. There are only 15 Georgia counties, out of a total of 159, which have a greater disparity per unit vote, and of these 15 counties 4 have disparity of less than 6 to 1. *It is thus apparent that a slight modification of the Georgia plan could bring it within the tolerance permitted in the federal scheme.*" (Italics supplied)

As previously demonstrated in this brief, no House or Senate district in Virginia has a population variance ratio which exceeds that of the Electoral College, even when such ratios are computed on the basis of figures which include military related population. It is thus manifest that no modification whatever is required to bring the Virginia reapportionment system within the "tolerance permitted in the federal scheme." And if military related population is excluded in computing such ratios, the resulting variance is well within the outer limits of the Electoral College disparities.

Finally, Defendants' Exhibit No. 7 (R. 280) discloses that 20 of the 40 members of the Senate of Virginia represent urban areas of the Commonwealth, while 20 of the 40 members represent rural areas. Similarly, Defendants' Exhibit No. 8 (R. 291) discloses that 48 of the 100 members of the House of Delegates of Virginia represent urban areas of the Commonwealth while 52 of the 100 members represent rural areas. It is thus unarguably apparent that no such epithets as "rural stranglehold" or "barnyard government" can possibly be leveled at the Virginia system.

In light of the foregoing, counsel for appellants assert that the statutes challenged in the case at bar are not invidiously discriminatory under the Fourteenth Amendment when the various aspects of Virginia's over-all reapportion-

ment system are considered. Before proceeding to an analysis of the several elements of that system, counsel believe it desirable to emphasize certain underlying principles applicable to litigation of this character which have often been stated by this Court and which have been recently reaffirmed in *Baker* and other post-*Baker* decisions. Foremost among these principles is that enunciated in *MacDougall v. Green*, 335 U. S. 281, 283-284, and restated with approval in *Baker*, *supra* at 265-266, 283, in the following language:

*"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."* (Italics supplied).

Moreover, in *Baker*, *supra* at 244-245, 258, 260, this Court proclaimed:

*"The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' . . . Universal equality is not the test: there is room for weighing.*

\* \* \*

"No one . . . contends that mathematical equality among voters is required by the Equal Protection Clause.

\* \* \*

"Moreover, there is no requirement that any plan have mathematical exactness in its application. Only where, . . . the total picture reveals incommensurables of both magnitude and frequency can it be said that there is present an invidious discrimination." (Italics supplied)

In *W.M.C.A. Inc. v. Simon*, *supra* at 384-385, the three-judge federal District Court—which unanimously sustained the New York reapportionment system on the merits—stated:

"'Invidious discrimination' is an irrational and inconstant action against a group of citizens. We do not find that the New York State apportionment policy is irrational; *all that plaintiffs have illustrated is that the apportionment is not based solely on population.* But as was said in *MacDougall v. Green*, 335 U. S. 281, 283, 69 S. Ct. 1, 2,

"'To assume that political power is a function exclusively of numbers is to disregard the practicalities of government.'

"*There are other criteria for determining apportionment besides population.* In *Baker v. Carr*, Justice Harlan said:

"'Nothing in the federal constitution [stops] a State from choosing a legislative structure it thinks is best suited to the interests, temper, and customs of its people. . . .'" (Italics supplied)

In *Sobel v. Adams*, *supra* at 321-323, the three-judge federal District Court—which sustained on the merits a Florida reapportionment system contemplated in certain proposed constitutional amendments—declared:

*"It is not required that, in all events, either or both houses of a bicameral legislature must be apportioned upon a population basis of either exact or approximate equality of representation. It is only when the discrimination is invidious or lacking in rationality that it clashes with the Equal Protection clause of the Fourteenth Amendment.*

\* \* \*

*"It is our considered view that the rationality of a legislative apportionment may include a number of factors in addition to population.*

\* \* \*

*"Once it has been determined, and we do so determine, that it is permissible so to apportion the Florida House of Representatives as to allot at least one member to each county, the question arises as to whether this can be and that there also be an apportionment on a strict basis of population. It is obvious that this cannot be done. . . . The zeal of the advocates of strict apportionment by a rigid population allocation fails to convince us that the results so achieved would be rational. The plan proposed by the Legislature of a representative from each county with additional representatives distributed on a basis of a population ratio seems to us to provide a formula which secures the desirable county representation and a reckoning, to the extent required, of the population factor."* (Italics supplied)

In *Baker v. Carr*, 206 F. Supp. 341, 345-346, the three-judge federal District Court—on remand of *Baker*—observed:

*"We find no basis for holding that the Fourteenth Amendment precludes a state from enforcing a policy which would give a measure of protection and recognition to its less populous governmental units. These subdivisions constitute an integral and historic part of the state's governmental structure. They have real and substantial interests in the state's laws, and the state could reasonably conclude that its best interests would be subserved by their effective participation in state government and in the formulation of its laws and policies. The state has the right, if it sees fit, to assure that its smaller and less populous areas and communities are not completely overridden by sheer weight of numbers."* (Italics supplied)

Finally, in *Daniel v. Davis*, ..... F. Supp. ...., decided June 28, 1963, the three-judge Federal District Court which sustained on the merits the reapportionment of the House of Representatives of Louisiana proclaimed:

*"Federal judges should tread lightly on ground historically within the province of state legislatures. Nevertheless we must fashion some test giving recognition to the right of the state's electorate to have adequate representation in state government. We conclude that legislative apportionment complies with the Equal Protection Clause if the apportionment plan, considered as a whole, has a rational basis and gives importance to population as a major factor. In applying the test the Court will not weigh with exactitude the legislative plan against a plan based on perfect equality."* (Italics supplied)

With these principles in mind, it is initially significant that the Virginia reapportionment system does not contemplate that each political subdivision (city or county) of the State shall be entitled to one representative in either the

House of Delegates or Senate of Virginia. It is the district—not the political subdivision—which forms the basic unit for representation in the General Assembly of Virginia. Moreover, the Virginia reapportionment system is not patterned after the Congress of the United States, i.e., one body of the General Assembly constituted on the basis of population and the other structured on the basis of geographic area without regard to population. It is the absence of these requirements—either of which would be constitutionally permissible—which accounts for the relatively small population variance ratios existing under the Virginia system, as compared with the more extreme population variance ratios which exist in the valid Florida, Louisiana, Idaho, Maryland, New Jersey, New York and Ohio schemes.

The reapportionment of the General Assembly of Virginia effected by Sections 24-12 and 24-14 of the Virginia Code embraces the following constituent elements:

- (1) Every House or Senate district containing more than one political subdivision should be composed of contiguous political subdivisions.

- (2) The geographical integrity of each political subdivision should be preserved, i.e., no city or county boundary line should be broken in establishing House or Senate districts.

- (3) When possible, the predominant geographic divisions of the Commonwealth (Tidewater, Piedmont, Southside, Valley and Southwest) should be observed, so that House and Senate districts may lie wholly within one such division, thus preserving the community of interests of the inhabitants thereof.

(4) As nearly as practicable, numerical equality between Delegates and Senators representing urban districts and those representing rural districts should be achieved.

(5) In general, geographically compact House and Senate districts containing a relatively small square mile area and a highly concentrated number of inhabitants—thus rendering a representative more easily accessible to his electorate—should contain a relatively higher population than those less compact districts having larger square mile areas and more limited representative-electorate accessibility.

(6) In general, the House and Senate districts possessing a greater number of political subdivisions (cities, counties or towns) and a larger number of constitutional officers should contain a relatively smaller population than those districts comprising a single city or county.

(7) Within the framework of the above enunciated criteria, population should be the predominant factor in reapportionment so that excessive population variance ratios may be avoided—military related population comprising transient, mobile, non-citizen inhabitants to be excluded in determining such population for the purposes of representation.

When these criteria are applied to the situation which obtains with respect to Arlington County, Fairfax County and the City of Norfolk, it is manifest that the Virginia reapportionment system effects no invidious discrimination against the citizens of such political subdivisions. With military related population excluded, Arlington County has

a population of 45,610 inhabitants per Delegate and 136,831 persons per Senator. These figures compare favorably with the "ideal representation" figures of one Delegate for each 39,669 inhabitants and one Senator for each 99,174 persons. This is especially true when one considers that Arlington County is a relatively small, densely populated county, having an area of only 24 square miles (less than half the size of the city of Norfolk), and that elected representatives of Arlington County represent only one political subdivision (the county itself) which contains only one governing body and one set of constitutional officers. See, Defendants' Exhibits Nos. 7 and 8 (R. 276, 289).

Similar adjustment of the population figures for Fairfax County to exclude military related population discloses that Fairfax County has 76,980 inhabitants per delegate and 115,471 persons per Senator. These ratios also compare favorably with the "ideal representation" figures when one considers that the district comprising Fairfax County, Fairfax City and the City of Falls Church has an area of only 407 square miles while other districts which are less heavily populated have areas ranging up to 2,776 square miles. See, Defendants' Exhibits 7 and 8 (R. 276, 286).

So far as the city of Norfolk is concerned, adjustment of its population figures to exclude military related population reveals that Norfolk has only 31,049 inhabitants per Delegate and only 93,148 persons per Senator, compared to the ideal representation figures of 39,669 and 99,174, respectively. Thus, with military related population excluded, *Norfolk is actually over-represented in both the House and Senate of Virginia on a strict population basis.* When one considers that Norfolk is also a densely populated area of only fifty square miles and that elected representatives of Norfolk represent only one political subdivision (the city itself) which contains only one governing body

and one set of constitutional officers, it is obvious that the Virginia reapportionment system effects no invidious discrimination against the City of Norfolk. See, Defendants' Exhibits 7 and 8 (R. 275, 283).

If the 1960 census figures are adjusted for military related population, the variance in population between the areas in which appellees reside and other areas of the State is considerably reduced. If, as stated in *MacDougall v. Green*, *supra*, at 284, and approved in *Baker*, *supra* at 266, the Fourteenth Amendment does not "deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses," then the General Assembly of Virginia could properly balance the representation of less populous areas and heavily populated metropolitan districts, even if the latter areas were inhabited entirely by citizens. And if, as stated in *Baker v. Carr*, *supra*, at 346, a State may "assure that its smaller and less populous areas and communities are not completely overridden by sheer weight of numbers," then certainly the General Assembly of Virginia could properly assure that less populous areas of Virginia were not completely overwhelmed by the sheer weight of numbers, grossly inflated with military related population, in certain areas geographically propinquant to the national capital and the Atlantic ocean. Yet the majority of the court below ignored these adjusted figures when it found "invidious discrimination" to exist with respect to the inhabitants of Arlington County, Fairfax County and the City of Norfolk.

Moreover, the majority jurists in the court below gave no consideration whatever to the factors of (1) relative size of various districts; (2) number of political subdivisions in various districts, (3) density of population in various districts and (4) relative representative-electoral accessibility, as

disclosed by the extensive evidence marshaled in defense of the Virginia reapportionment system. Nor was any proper application of the principles that "the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others" and that "the burden of establishing the unconstitutionality of a statute rests on him who assails it" *Baker v. Carr, supra*, at 266, made, or even attempted, by the majority.

Finally, the majority opinion of the court below is highlighted by the total absence therefrom of any reference whatever to (1) the relatively minor population variance ratios which exist under the Virginia reapportionment system, even if such ratios are computed on the basis of figures which include military related population, (2) the Electoral College data summarized, *ante*, pp. 46, 47, and (3) the rank order of Virginia (8th) in fairness of representation as contrasted with the rank order of other States in which reapportionment plans have been judicially approved. Consistent with the absence of any such references is the failure of the majority *even to mention* the decisions of the three-judge District Courts in *Sobel v. Adams, supra*, and *W.M.C.A., Inc. v. Simon, supra*. It fell to the dissenting judge to point out that in the latter of the above-mentioned cases, a three-judge federal District Court had validated the New York reapportionment system, in which system the weighted vote demonstrated "a far greater disparity than that which exists in Virginia." *Mann v. Davis, supra* at 589.

In addition, in his opinion in the court below, *Mann v. Davis, supra*, at 586, 588, 589, the dissenting judge canvassed the situation which has obtained with respect to reapportionment in Virginia and noted (1) that Virginia—unlike the legislatures of many states—has consistently reapportioned

its senatorial and house districts decennially in accordance with the mandate of Section 43 of the Virginia Constitution; (2) that other districts which may have been disadvantaged by the 1962 reapportionment "have not seen fit to attack the constitutionality" of the statutes in controversy; and (3) that if additional representatives were awarded to Fairfax, Arlington and Norfolk, such representatives "must be taken from other areas" and the court "would undoubtedly be faced with further litigation" by other districts.

Thereafter, the dissenting judge made the following pertinent observations and inquiries:

"In my judgment the decision of the majority *places too much emphasis* upon the weighted vote of one county, city, or district as contrasted with the weighted vote in another county, city or district.

\* \* \*

"Granting relief at this time without sufficient guidepost to govern our action *establishes a dangerous precedent.*

\* \* \*

"... the mere failure to disprove discrimination by population does not, in my opinion, establish 'invidious discrimination *when Virginia's overall picture is reviewed.*'

\* \* \*

"Virginia stands eighth in the nation in an index of representatives among state legislatures as prepared by the Bureau of Public Administration of the University of Virginia subsequent to the passage of the 1962 Act. More proportionate representation is available only in Oregon, Massachusetts, New Hampshire, West Virginia, Maine, Wisconsin and Alaska. In determining whether the 1962 Reapportionment Act constituted 'arbitrary and capricious state action' or,

as described by the majority, 'individuous' discrimination, *are we to look at the entire pattern of apportionment or should we only consider apportionment of one district as against another? These are, in my judgment, unanswered questions.*" (Italics supplied)

Obviously, the majority jurists in the court below could not hope to harmonize their conclusion with the decisions in the Florida (*Sobel v. Adams, supra*) and New York (*W.M.C.A., Inc. v. Simon, supra*) cases, nor can that conclusion now be squared with the decisions of other State and Federal courts in the Idaho (*Caesar v. Williams, supra*), Louisiana (*Daniel v. Davis, supra*), Maryland (*Maryland Committee for Fair Representation v. Tawes, supra*), New Jersey (*Jackman v. Bodine, supra*) and Ohio (*Nolan v. Rhodes, supra*) reapportionment cases. Certainly, no one will have the temerity to suggest that the Equal Protection Clause of the Fourteenth Amendment imposes some higher standard upon—or requires something more from—Virginia than is required of the other forty-nine States in the Union. If the Virginia reapportionment system is ultimately invalidated, then the reapportionment systems of the other forty-two States in the Union which rank lower than Virginia in fairness of representation must necessarily be annulled. If the decision of the majority in the court below is ultimately sustained, and the decisions of the various State and Federal courts approving the reapportionment plans of Florida, Idaho, Louisiana, Maryland, New York, New Jersey and Ohio remain unreversed, the result of this Court's historic decision in *Baker* will be merely the substitution of an irrational, no-policy *judicial* standard of legislative apportionment for the irrational, no-policy *legislative* standard currently alleged to be in effect in the various States.

## CONCLUSION

In *Baker v. Carr*, *supra*, this Court held that the plaintiffs had set out in their complaint a justiciable cause of action which they had standing to maintain and the District Court had jurisdiction to hear. The salient aspects of the Tennessee apportionment system are now well known and have previously been summarized in this brief. *Ante*, pp. 30, 31. In contrast to the situation there under consideration, the significant features of the case at bar stand out in bold relief:

1. The General Assembly of Virginia has consistently reapportioned the Commonwealth decennially in accordance with the mandate of Section 43 of the Virginia Constitution.

2. Complete relief is available to the plaintiffs in the Supreme Court of Appeals of Virginia. In 1932, that Court (a) invalidated an enactment of the General Assembly of Virginia which failed to reapportion the Commonwealth for congressional representation according to population as required by Section 55 of the Virginia Constitution and (b) directed congressional elections for that year to be conducted on an "at large" basis. Indeed, a suit to obtain such relief is even now pending in the Circuit Court of the City of Richmond, has been heard and argued and is presently awaiting decision. *Tyler v. Davis*, *supra*.

3. The only discrimination alleged or attempted to be established by plaintiffs in the case at bar is one "exclusively of numbers" based solely on certain variances in population between districts. No suggestion is made that the challenged statutes discriminate against any individual, group or district upon the basis

of race, creed, national origin, political persuasion or rural-urban character.

4. *Based solely on population*, Virginia ranks 8th in the United States in fairness of representation subsequent to the enactment of the challenged statutes. No reapportionment suit has been successfully maintained in any State having a higher rank on this index, while reapportionment systems of States having lower rank on such index have been judicially approved.

5. The most excessive population variance ratio in Virginia, *based solely on population*, does not exceed that which exists in the Electoral College of the United States.

6. The majority opinion of the court below made no reference to any factor other than population figures, and that no consideration to the factors of military related population, relative size of various districts, number of political divisions in various districts or density of population in various districts.

When these significant features are viewed in light of the "settled principles" applicable to litigation of this character, counsel for appellants submit that the majority decision in the court below is clearly erroneous. Initially, we point out that this Court's historic opinion in *Baker* did not involve application of the doctrine of abstention and that the principles previously enunciated by this Court concerning the applicability of that doctrine are still in full force and effect. Moreover, counsel for appellants assert that the Virginia reapportionment statute challenged in the instant case effect no invidious discrimination antagonistic to the Fourteenth Amendment against the citizens of any House or Senate

district in Virginia, even if such statutes are considered on the basis of population figures which include military related population. In addition, we maintain that military related population may properly be excluded in determining the number of inhabitants in each district for the purpose of representation, and that—with such population excluded—the statutes in question are invulnerable upon attack upon Federal constitutional grounds.

In light of the foregoing, counsel for appellants submit that the decision of the court below should be reversed and the cause remanded to the District Court with instructions to (1) dismiss the complaint on the merits or (2) in the alternative, to abstain from conducting further proceedings pending decision of the case of *Tyler v. Davis* by the Supreme Court of Appeals of Virginia.

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I, R. D. McIlwaine, III, one of counsel for the appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of August, 1963, I served copies of the within Brief on Behalf of Appellants on the several appellees herein by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: Edmund D. Campbell, Esquire, Southern Building, Washington, D. C.; E. A. Prichard, Esquire, 106 N. Payne Street, Fairfax, Virginia; Sidney H. Kelsey, Esquire, 1408 Maritime Tower, Norfolk, Virginia; Henry E. Howell, Jr., Esquire, 808 Maritime Tower, Norfolk, Virginia; and Leonard B. Sachs, Esquire, Citizens Bank Building, Norfolk, Virginia.

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*Assistant Attorney General*

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1963

No. 69

LEVIN NOCK DAVIS, SECRETARY, STATE BOARD  
OF ELECTIONS, et al., *Appellants*,

*v.*

HARRISON MANN, et al., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

BRIEF FOR APPELLEES MANN, STONE, WEBB AND  
DONOVAN

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v. <sup>1</sup>

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
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BRIEF FOR APPELLEES MANN, STONE, WEBB AND  
DONOVAN

Statement of the Case

The legislative power of Virginia is vested in a General Assembly composed of a House of Delegates of one hundred members and a Senate of forty members. The Constitution limits the size of the two Houses.<sup>1</sup> Reapportionment is required decennially.<sup>2</sup>

Although the Constitution does not forbid it, the counties

<sup>1</sup> Constitution of Virginia, Sections 41, 42.

<sup>2</sup> Constitution of Virginia, Section 43.

and cities have never been divided in the apportionment process. Flexibility has been achieved by the use of multi-member districts and "floater" members.

In 1950, Virginia had a population of 3,318,680. The ideal population per member of the House of Delegates was 33,187.

In 1952 the General Assembly adopted an apportionment plan, not here in question, under which the largest population represented by a delegate was 61,787 in the City of Alexandria; the smallest, 19,218 persons in Botetourt and Craig counties. (Pl. Ex. 17, R. 199, 201.) The disparity in the extreme of representation was slightly in excess of 3 to 1. In the Senate, the difference was roughly 2 to 1.

Because the population growth of the state was largely concentrated in the areas involved in this appeal plus the Richmond suburban area, the departure from ideal representation worsened until, following the 1960 census, the voting strength of a citizen of Botetourt and Craig counties exceeded that of Fairfax county by more than 7 to 1; the voters of Lee and Scott counties had six times the representation in the Senate of a voter of Fairfax or Falls Church. (R. 14, 15.)

Measured by the David method,<sup>3</sup> the vote of a citizen of Fairfax had an index value of .28 in the election of delegates. A vote cast by a resident of Botetourt county for a delegate had an index value of 1.98. (Pl. Ex. 1, R. 88.)

In January 1961, the Honorable J. Lindsay Alnfond, Jr., Governor of the Commonwealth of Virginia, appointed a commission on redistricting. (Pl. Ex. 2; R. 89.) The

<sup>3</sup> Professor Paul T. David, of the University of Virginia, has devised a formula whereby the actual population per representative is compared to the state average population per representative. He assumes that the value of a citizen's vote in a district which is the size of the state average population per representative is 1.00. Indices larger than 1.00 indicate over-representation and indices smaller than 1.00 indicate under-representation (Pl. Ex. 1, R. 87.)

Hoover Commission, as it became known, employed the assistance of the Bureau of Public Administration of the University of Virginia. On July 10, 1961, the Bureau submitted to the Commission a report discussing methods of legislative apportionment and the principles as applied to Virginia. The Bureau suggested to the Hoover Commission that districts should be, as nearly as practicable, equal in population, with the deviation from equality being in most cases no more than 15% and in no case beyond 25%. (Pl. Ex. 2; R. 96.) With its report the Bureau submitted two alternative plans for the apportionment of the House of Delegates and three alternative plans for the apportionment of the Senate. In formulating the plans, the Bureau followed the criteria which had been considered in previous apportionments. None of the ninety-eight counties or thirty-two independent cities was divided. The one hundred member constitutional limitation on the House of Delegates, and the forty member limitation on the Senate were followed. Only contiguous jurisdictions were included within multi-member districts.

Plan A, House of Delegates, as the Bureau labeled its first plan, had a maximum deviation from ideal of 17%; Plan A, Senate, a maximum variation of 22%. Measured according to the David method the richest vote under Plan A, House of Delegates, was worth 1.17; the weakest had an index value of .83. (Pl. Ex 3; R 103) Plan B, House of Delegates accorded the most favored voter a ratio of 1.22, the weakest voter .61 (Pl. Ex 3; R119)

The principal difference was that in Plan A the Bureau took into consideration population, contiguity of territory and community of interest, without regard to the existing district boundaries. In Plan B the Bureau suggested that existing districts not grossly over-represented or under-

represented be left as they were. In other words, the element of political compromise was added to Plan B.

On November 15, 1961, the Hoover Commission filed its report recommending a plan of redistricting different from any of the plans submitted by the Bureau of Public Administration. Its plan, which contained more of the oil of political compromise, deviated still further from the ideal and accorded less representation to appellees. (Pl. Ex. 12; R.159)

At the 1962 regular session, the General Assembly brushed aside the Hoover Commission report and the plans prepared by the Bureau of Public Administration and re-enacted the 1952 statutes with a few patchwork changes. These are the Acts here complained of.

The 1962 Apportionment Acts compare with Plans A and B of the University of Virginia and the Hoover Commission Report as follows:

Jurisdiction	1952 Apportionment Acts	Plan A.	Plan B.	Hoover Commission	1962 Apportionment Acts
<b>Arlington:</b>					
Delegates	3	4	4	3	3
Senators	1	2	1	1½*	1
<b>Fairfax:</b>					
Delegates	2	7	5	4	3
Senators	1	3	3	2½*	2
<b>Norfolk:</b>					
Delegates	6	7	7	7	6
Senators	2	3	3	3	2

\*Floater Senator proposed for Arlington and Fairfax.

The following tables, summarized from the District Court's opinion, (R. 62-64) graphically illustrate some of the most striking inequities in the 1962 Act:

#### House of Delegates

District	Population	Delegates	Population per Delegate
Arlington	163,401	3	54,467
Fairfax	235,194	3	95,064
Norfolk	304,869	6	50,812
Shenandoah	21,825	1	21,825
Wythe	21,975	1	21,975
Grayson	22,644	1	22,644
Bland	23,201	1	23,201
Loudoun	24,549	1	24,549
Gloucester	25,359	1	25,359
Franklin	25,925	1	25,925
Rockingham	52,401	2	26,200
Buckingham	26,385	1	26,385
Southampton	27,195	1	27,195
Pulaski	27,258	1	27,258
Charlotte	27,489	1	27,489
Alleghany	28,458	1	28,458
Greensville	28,566	1	28,566
Pittsylvania	58,296	2	29,148
Fluvanna	29,392	1	29,392
City of Charlottesville	29,427	1	29,427
Fauquier	29,434	1	29,434
City of Petersburg	58,933	2	29,466
Amelia	29,703	1	29,703

District	Senate Population	Senators	Population per Senator
Arlington	163,401	1	163,401
Fairfax	285,194	2	142,597
Norfolk	304,869	2	152,435
Brunswick			
Lunenburg			
Mecklenburg	61,730	1	61,730
Goochland			
Louisa			
Orange			
Spottsylvania			
City of Fredericksburg	62,523	1	62,523
Culpeper			
Fauquier			
Loudoun	63,703	1	63,703
Clarke			
Frederick			
Shenandoah			
City of Winchester	66,818	1	66,818
Halifax			
Charlotte			
Prince Edward			
City of South Boston	67,100	1	67,100
Dickenson			
Wise			
City of Norton	68,803	1	68,803
Bland			
Giles			
Pulaski			
Wythe	72,434	1	72,434
Greensville			
Prince George			
Surry			
Sussex			
Hopewell	72,951	1	72,951
Norfolk County			
City of South Norfolk (now City of Chesapeake)	73,647	1	73,647
Dinwiddie			
Nottoway			
City of Petersburg	74,074	1	74,074
Appomattox			
Buckingham			
Cumberland			
Powhatan			
Amherst			
Nelson			
Amelia	76,652	1	76,652

It will be noted that the smallest population per delegate was in Shenandoah county with 21,825 persons and a stable population. The largest population per delegate was in rapidly growing Fairfax county with a population of 95,064 per delegate. The difference between the value of a vote in Shenandoah county and the value of a vote in Fairfax by 1960 figures was 4.36 to 1.

The largest senatorial district is the City of Norfolk with 152,435 persons per senator. The smallest is Brunswick, Lunenburg and Mecklenburg counties with a population of 61,730. Again, the smaller district is in an area of stable population; the under-represented district is growing at a rapid rate. The disparity in the Senate from the largest to the smallest district according to 1960 figures was 2.65 to 1.

There was no evidence in the court below that the General Assembly took into consideration any factor other than those enumerated in the report of the Bureau of Public Administration of the University of Virginia: population, contiguity of territory, community of interest.

On April 9, 1962, appellees, voters and taxpayers of Arlington and Fairfax counties, filed suit in the United States District Court for the Eastern District of Virginia, (R.1) invoking the court's jurisdiction pursuant to 28 U.S.C. 1343 (3) and 42 U.S.C. 1983, 1988. Norfolk citizens were thereafter permitted to intervene. (R. 32) Following the introduction of evidence, argument and submission of briefs, the United States District Court held on November 28, 1962, that the Apportionment Acts adopted by the General Assembly at the 1962 session,<sup>4</sup> denied the appellees and persons similarly situated the equal protection of the law in violation of the Fourteenth Amendment. The defendant election officials were enjoined from proceeding

<sup>4</sup> Chapter 635 and Chapter 638, 1962 Acts of Assembly.

pursuant to the unconstitutional acts. The enforcement of the injunction was stayed until January 31, 1963, so that the General Assembly of Virginia might, if the Governor or the required number of members of the General Assembly were so advised, be called in special session to remedy the unconstitutional apportionment (R. 79). The order of November 28, 1962, was further stayed by this Court. Probable jurisdiction was noted on June 10, 1963.

## ARGUMENT

### I

**The District Court was correct in ruling that the Virginia Apportionment Statutes deprive appellees of the equal protection of the laws.**

Section One of the Fourteenth Amendment to the Constitution of the United States denies to any state the power to discriminate against any citizen. Appellees, who are residents of Fairfax county, have been given less than one-fourth the representation of citizens of Shenandoah county; less than one-fourth as much as citizens of the adjoining county of Loudoun. Appellees who reside in Arlington and Norfolk counties have suffered a similar debasement of their voting power.

There is no question but that the appellees have been accorded less than equal representation. There is no question but that the most seriously under-represented areas of the state, in which the appellees reside, are also the most rapidly growing areas of the State. The continued growth of the area means that the 4.36 to 1 disparity in voting strength in 1960 will become a 9 or 10 to 1 disparity by 1970. In 1950, the vote of a resident of Fairfax county was equal to a little less than one-half the vote of a citizen of Botetourt county. By 1960, the population of Fairfax

county had grown so rapidly, while Botetourt and Craig counties stood still, that a Fairfax county citizen's vote amounted to but one-seventh of that of a Botetourt citizen.

Appellants cannot argue that the appellees have been treated equally. The gist of their argument is that a 4.36 to 1 disparity in voting strength from one county to another is not the gross disproportion of representation mentioned in *Baker v. Carr*, 369 U.S. 186, and that Virginia's discrimination does not, therefore, offend the equal protection clause.

Of course, equality is reasonable equality. Mathematical equality is not possible. Some deviation from the ideal is necessary unless Virginia is redistricted without regard to county and city lines—something which the appellees have not contended should be done. The Bureau of Public Administration of the University of Virginia suggested that the maximum deviation should not exceed 25% and demonstrated that without transgressing the guide lines followed in the past, it is possible to construct a plan which deviates from the ideal no more than 17% in the House and 22% in the Senate. (Pl. Ex. 3, R. 103; Pl. Ex. 7, R. 134.) The Bureau's plan would accord relatively equal protection to the citizens of Arlington, Fairfax and Norfolk. The Bureau and the Hoover Commission constructed still two other plans considerably less discriminatory than the patchwork plan which was adopted by the legislature.

The concept of political equality—the idea of one person, one vote—upheld in *Gray v. Sanders*, 372 U.S. 368, is as much violated by giving one citizen 4.36 times the voting power of another citizen, as by the 19 to 1 disparity between the voting power of citizens in Tennessee prior to *Baker v. Carr*. The question is not how much other states have discriminated against their citizens in legislative apportionment, but whether the appellees, who reside in Arlington and Fairfax counties and the City of Norfolk

in the Commonwealth of Virginia, have been denied the equal protection of the laws. Virginia cannot absolve itself of its sins by casting stones at its neighbors.

Similarly, the argument of the Commonwealth that *Baker v. Carr* is not controlling in the present case because the appellees have not shown gross disparities between the voting strength of rural and urban areas is inapposite. The situation in Virginia is even more of a crazy quilt than that which existed in Tennessee, where at least it was apparent that the failure to reapportion was the result of rural agreement to deny an equal voice to urban voters. In Virginia there is no such logical explanation. Several cities are over-represented. Certain rural districts are under-represented. The General Assembly has allotted Loudoun county with a population of 24,549 a delegate by itself, giving Loudoun citizens an index value of 1.62. (Int. Ex. 1, R. 334.) It allotted adjacent Fairfax and Falls Church three delegates for a population of 285,194, producing an index value of .42—(R. 22, 333) a discrepancy of approximately 4 to 1 between neighboring suburban communities. Richmond and adjacent Henric county with a population of 337,297 were given nine delegates (R. 23, 24) as compared with the three allotted Fairfax and Falls Church which are almost equal in population. (R. 22.) Adjacent rural senatorial districts in piedmont Virginia showed a population differential of almost 2 to 1.<sup>5</sup>

The appellants did not attempt to explain the gross disparities which exist between the various areas of the state of Virginia practically identically situated. They could not, for there was no explanation save the desire of the members of the legislature to maintain themselves in office.

<sup>5</sup> Senate District 26, population 63,703; Senate District 28, population 111,059. (Def. Ex. 7, R. 279.)

## II

When appellees showed the gross numerical disparity in voting strength, the burden shifted to the appellants to establish some rational basis for the disparity.

The District Court held that when the appellees proved the inequity of representation on the basis of population, the burden shifted to the appellants to introduce evidence which might explain the inequities.

Of course, as appellants argue, it is the rule that a classification having some reasonable basis does not offend the Equal Protection clause of the Fourteenth Amendment merely because it is not made with mathematical nicety or because in practice it results in some inequality. *Morey v. Dowd*, 354 U.S. 457, 463.

It is also true that ordinarily state legislation is presumed constitutional and a classification attacked as discriminatory will be upheld if any state of facts may reasonably justify it. However, in freedom of speech cases the rule has been otherwise. There, once the discrimination has been shown, the burden has been thrust upon the state. *Speicer v. Randall*, 357 U.S. 513, 526; *United States v. Caroline Products*, 304 U.S. 144.

In our society the right to vote is as fundamental as the right to speak. The idea of one man, one vote, is a cornerstone of representative democracy. Therefore, the same considerations which justify a lessening of the burden of a litigant in a freedom of speech case support the holding of the lower court and of the whole trend of the lower court decisions following *Baker v. Carr* that once a showing of gross disparity in voting strength has been shown, the state has the burden of proving the justification for the disparity. As suggested by *amici curiae*, the ultimate test is whether the defenses urged by the state justify the ra-

tionality of their apportionment plans. *Davis v. Synhorst*, 217 F. Supp. 492, 497 (S.D. Iowa 1963): "It has been widely accepted that proof of a very substantial disparity in representation is sufficient to establish a *prima facie* case of invidious discrimination." *Moss v. Burkhart*, 207 F. Supp. 885, 891 (W.D. Okla. 1962): "An actionable deprivation results only from an invidious discrimination—a disparity without rationality. It seems fair to say, however, that a disparity of 10 to 1 in voting strength between election districts makes out a *prima facie* case for invidious discrimination." *Thigpen v. Meyers*, 211 F. Sup. 826, 832 (W.D. Wash. 1962): "The population figures before us revealed existence of extreme and striking disparities in voting values as to both Houses of the State Legislature. These are of sufficient magnitude to rebut the presumption. Such being the case, the defendants have the burden to establish some rational basis for them. This they have failed to do." See also *Scholle v. Hare*, 367 Mich. 176, 116 N.W.2d 350 (1962).

### III

**There is no merit in the argument that appellees are entitled to less representation because of their military population.**

In attempting to justify the unequal treatment accorded citizens of Arlington, Fairfax and Norfolk, the appellants made a single argument. They introduced figures showing the military population of the three jurisdictions. They argued that the legislative could have disregarded the military population in these districts.

There was no evidence that the General Assembly did in fact deduct from population figures for the various jurisdictions the military personnel residing within their boundaries. The military figures adduced related only to the three jurisdictions, although there are many other military

bases in the state. Indeed, at the trial the Attorney General could not state the number of military personnel in the State of Virginia.

There was no suggestion that students at colleges, inmates of institutions or other persons temporarily resident and counted in a jurisdiction at the time of the census, (Def. Ex. 11, R. 316) were deducted from population figures of other political subdivisions in the state. There is no constitutional provision nor any statute which treats military personnel differently from other citizens. No evidence was introduced as to the proportion of military personnel resident in Arlington, Fairfax and Norfolk, who are permanent residents of the area and who vote there. The number of military-related persons cited by the appellants was arrived at by multiplying military personnel by two and one-half. There was no suggestion as to the origin of such a factor.

Since the state had no figures on total military population and no break down of military population in other political subdivisions of the state, it is apparent that the numbers of military-related personnel had nothing to do with apportionment. If such a deduction had been made in Arlington, Fairfax and Norfolk and not in the rest of the state, the discrimination would have been all the more invidious.

Even accepting the argument of appellants that the legislature might have deducted military related personnel resident in Arlington, Fairfax and Norfolk without making similar deductions of military personnel in other counties and cities, the discrimination was far more than a mathematical nicety. Appellants contend that after deducting military related personnel resident in Fairfax county, a resident of Shenandoah county would have a vote only 3.53 times the value of the vote of a citizen of Fair-

**fax.** No explanation was offered as to why, even had the legislature made a deduction of military—related personnel in Fairfax, the vote of a Shenandoah county resident should be worth more than  $3\frac{1}{2}$  times the vote of a non-military citizen of Fairfax.

To put the shoe on the other foot, the legislature should have, but did not, consider the rapid growth of the Arlington, Fairfax and Norfolk areas. If any areas of the state were entitled to greater representation at the beginning of the decennial period, these were the areas because, no matter how fairly apportioned by 1960 population figures, the vote of the citizen of a rapidly growing area is progressively watered down at each election. As happened under the 1952 Apportionment Act, it is likely that by 1972 the disparity between rural districts and suburban districts will be 9 or 10 to 1.

The military argument, the only argument advanced by the state as a reasonable basis for the inequality of treatment accorded appellees, falls of its own weight. The record is devoid of any explanation. The appellees were discriminated against without rhyme or reason.

#### IV

**W.M.C.A., Inc. v. Simon and other lower court cases cited by Appellants are not inconsistent with the opinion below**

Appellants rely on district court decisions in Florida, Louisiana, New York and Ohio, and state court decisions from Idaho, Maryland and New Jersey, which denied relief to plaintiffs attacking reapportionment statutes.\*

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\* *Sobel v. Adams*, 208 F.Supp. 316 (S. D. Fla. 1962). *Caesar v. Wilkoms*, Idaho, 371 P. 2d 241 (1962). *Daniel V. Davis*, — F.Supp. — (La. 1963). *Maryland Committee for Fair Representation v. Tawes*, 229 Md. 406, 184 A.2d 715. *Jackman v. Bodine*, 78 N.J. Super. 414, 188 A.2d 642 (1962). *W.M.C.A. Inc. v. Simon*, 208 F.Supp. 368 (S.D. N.Y. 1962). *Noland v. Rhodes*, — F.Supp. — (S.D. Ohio 1963).

The New York and Maryland cases are now on appeal in this Court and appellees in the case at bar associate themselves with the position taken by appellants in those cases. But assuming arguendo that the decisions below in those cases correctly applied the precedent of *Baker v. Carr*, supra, they are nevertheless readily distinguishable. In each of them the apportionment plan under attack provided that each county was entitled to representation by itself in at least one House. In the Maryland case, the so called Federal Analogy was applied. In each of the cases malapportionment was something of an historical accident. The situation in Virginia is quite different. There never has been a requirement that each county is entitled to one delegate or one senator. The "Federal Analogy" has no application. Appellees do not, of course, concede that were the State of Virginia at this time to undertake to construct an apportionment system which involved the allocation of one senator or one delegate per county, that it would not be violative of the Equal Protection clause. There would be no historical basis in Virginia for application of the one delegate per county rule or the "Federal Analogy". Such a departure at this time would be patently an excuse to discriminate against populous areas.

The right to vote is a personal right. *United States v. Bathgate*, 246 U.S. 220, 227. The injury to the appellees was a personal denial of equal protection of the laws and a personal debasement of their votes as compared with citizens of other counties of the state.

As has been suggested by *amici curiae*, it is common knowledge that the cities contribute a larger per capita share of total state revenues than do rural areas. Likewise, it is everywhere the case that the per capita return to cities is less than the proportionate return to rural areas. Thus, the appellees have suffered a collective in-

jury in that the areas of the state in which they reside, while bearing more than their proportionate share of the costs of the state, have received less from the state in return. As *amici curiae* so ably argue, the debasement of the voting power of urban voters is directly connected with the distribution of state revenues. The inability of urban areas to obtain assistance at state level has led to increasing reliance upon federal aid and a consequent erosion of the federal system. Truly representative state governments responsive to the needs of their citizens can reverse the trend of increasing federalism. Contrary to the fears expressed by appellants,<sup>7</sup> *Baker-v. Carr*, *supra*, and the decision of the court below may serve the cause of states rights.

Again, appellants argue that if Virginia discriminates no more against appellees than the electoral college discriminates in favor of the voters of Alaska, there can be no finding of invidious discrimination in Virginia. The electoral college, of course, is an anachronism born of compromise. The Fourteenth Amendment, which came later, prohibits state action, not national. Moreover, the analogy has been rejected by this court. *Gray v. Sanders*, 372 U.S. at 378.

## V

### **The doctrine of abstention does not apply to this case**

Appellants argue that the District Court should have declined to exercise jurisdiction because the General Assembly of Virginia has followed the constitutional mandate to reapportion following each decennial census.

The answer is that the question before the Court is not whether the General Assembly of Virginia has followed

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<sup>7</sup> "The Tennessee Reapportionment Case." Distributed by the Virginia Commission on Constitutional Government, David J. Mays, Chairman.

the Constitution of Virginia, but whether the apportionment statutes adopted have deprived appellees of equal protection of the laws. When in 1962 the General Assembly undertook the task of redistricting the state, it had before it a plan devised according to methods previously followed in state reapportionments which accorded appellees relative equality. Instead of adopting a carefully constructed plan in which the districts did not vary more than 17% from the ideal in the House and 22% in the Senate, the General Assembly adopted a hastily constructed patchwork plan which devalued the votes of appellees of Fairfax county 4.36 to-1. The question is not of state rights, but of individual rights.

The second argument advanced by appellants in support of their contention that the District Court should have abstained from exercising jurisdiction, is that the appellees have an adequate remedy in the courts of the State. Appellants discuss a case, dehors the record, filed in a state court following the decision of this case below. An examination of the bill of complaint printed in appellants' appendix, shows that the plaintiff in that case prayed an order enjoining the elective officers from conducting a Democratic primary pursuant to the apportionment statutes adopted in 1962. Nomination of candidates in the Democratic primary of Virginia is tantamount to election in most of the legislative districts. Senators nominated in the primary of 1963, whose election will follow as a matter of course in the general election of 1963, will serve until 1968. The 1963 Democratic primary has come and gone without the state court having acted. It is apparent that the plaintiffs in the state court case can take little comfort from that proceeding.

Appellants further cite *Brown v. Saunders*, 159 Va. 28,

166 S.E. 105, as evidence that appellees have an adequate remedy under state law. That was a case which arose under the congressional apportionment act of 1932, which failed to comply with Section 55 of the Virginia Constitution, which provides that congressional districts "shall be composed of contiguous and compact territory containing as nearly as practicable, an equal number of inhabitants." It is sufficient to say that there is no similar requirement in Section 43 of the Constitution of Virginia which provides simply: "A reapportionment shall be made in the year 1932 and every ten years thereafter."

Appellants argue thirdly that the courts of the state have not refused to consider relief requested by appellees. It is apparent from the report of *Tyler v. Davis*, pending in the Circuit Court of the City of Richmond, that while the court may have considered a request for relief, it granted none.

Appellants argue, fourthly, that section 43 of the Virginia Constitution has not been construed and that a construction is vital to a final determination of the issues presented in this case.

Section 43 goes no further than to require re-apportionment every ten years. The General Assembly has complied with the mandate. The Constitution contains no guide lines. There is nothing in the request for relief of the appellees which requires a construction of Section 43 of the Constitution or Sections 24-14 and 24-12 of the Code of Virginia. There is no ambiguity. No court can read into either of the sections of the code, or Section 43 of the Constitution, the eight additional seats in the General Assembly to which the appellees and their fellow voters are entitled. The question before the court is whether the appellees have been denied the equal protection of the laws in violation of the Federal Constitution. Surely the Federal courts are as

able as the state courts to determine whether the appellees' constitutional rights have been transgressed.

Appellants cite a number of cases in which Federal courts have abstained from exercising jurisdiction. All of the cases preceded *Baker v. Carr*. They fall in two classes.

First, those cases in which the Federal courts have delayed the exercise of jurisdiction until an ambiguity in state law has been resolved. E.g. *Clay v. Sun Insurance Office, Ltd.*, 363 U.S. 207; *Harrison v. N.A.A.C.P.*, 360 U.S. 167. This case is not controlled by that line of authority since there was no ambiguity in the statutes or in the Constitution pursuant to which the statutes were passed.

Secondly, are the comity cases under the Due Process clause of the Fourteenth Amendment in which plaintiffs have been remitted to the state courts for the protection of their property rights. E.g. *Martin v. Creasy*, 360 U.S. 219; *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368. This is not a Due Process case involving a collision between a state's power of eminent domain and the Due Process clause, nor a collision between the police power and the Due Process clause.

The doctrine of abstention has not been applied in reapportionment cases. In *Baker v. Carr*, 369 U.S. 186, the Court held that the complainant's allegations of a denial of equal protection presented a justiciable constitutional cause of action upon which the appellants were entitled to a trial and a decision. Nothing in the case of *Scholle v. Hare*, 369 U.S. 497, nor the case of *Gray v. Sanders*, 372 U.S. 368, suggests that the United States District Court should refrain from hearing complaints in which plaintiffs have invoked the Civil Rights Act to protect their voting strength under the Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States.

Some sixteen cases have been filed, have been tried and have been decided by district courts across the land without the doctrine of abstention having been applied in one case. See: *Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala. 1962); *Lisco v. McNichols*, 208 F. Supp. 471 (Colo. 1962); *Sincock v. Duffy*, 215 F. Supp. 169 (Del. 1963); *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla. 1962); *Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga. 1962); *Davis v. Synhorst*, 217 F. Supp. 492 (S.D. Iowa 1963); *League of Neb. Municipalities v. Marsh*, 209 F. Supp. 189 (Neb. 1962); *WMCA, Inc. v. Simon*, 208 F. Supp. 368 (S.D. N.Y. 1962); *Lein v. Sathre*, 205 F. Supp. 536 (N.D. 1962); *Noland v. Rhodes*, — F. Supp. —, (S.D. Ohio 1963); *Moss v. Burkhart*, 207 F. Supp. 885 (W.D. Okla. 1962); *Nolan v. DiSalle* — F. Supp. — (S.D. Ohio, June 12, 1963); *Baker v. Carr*, 206 F. Supp. 341 (M.D. Tenn. 1962); *Mann v. Davis*, 213 F. Supp. 577 (E.D. Va. 1962); *Thigpen v. Meyers*, 211 F. Supp. 826 (W.D. Wash. 1962); *Wisconsin v. Zimmerman*, 209 F. Supp. 183 (W.D. Wisc. 1962).

### Conclusion

The District Court found the 1962 Apportionment Acts of Virginia violative of the Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States. The court stayed the execution of its order to give the General Assembly ample time in which to meet and adopt an apportionment standard which met the constitutional requirements. This would have been an easy task since the legislature had before it a plan prepared by an arm of the state in which the deviation from ideal representation did not exceed 17%. The state declined to accept the opportunity.

The court below wisely refused to abstain from a con-

sideration of the important constitutional issues involved. The doctrine of abstention does not apply to voting cases arising under the Equal Protection clause, particularly when there was no ambiguity under either the apportionment acts complained of, or the Constitution pursuant to which the apportionment acts were adopted.

The contention of the state that appellees have an adequate remedy at state law is patently inaccurate. The subsequent suit brought by other voters of Norfolk in a state court to enjoin the putting into effect of the unconstitutional apportionments act failed to accomplish anything.

Neither the federal analogy nor the cases arising in states in which each county has historically been given its own representative in at least one house of the legislature have any bearing on the Virginia case. In Virginia the overriding consideration in past apportionments has been population.

The gross disparity between the voting strength of appellees and citizens of other jurisdictions within the state having been shown, the burden shifted to the state to show some logical explanation for the inequality of treatment. The argument of the state that the legislature might have considered the military population of Arlington, Fairfax and Norfolk was belied by the fact that no similar statistics were introduced for other jurisdictions within the state which also have military populations. No explanation other than the military argument was forthcoming. The District Court was plainly right in ruling that the apportionment acts of Virginia were invidiously discriminatory and deprived the appellees of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Appellees respectfully submit that the decision of the court below should be affirmed. Then, in the event the

General Assembly still declines to act, the District Court will have already before it three alternative plans devised according to the state's criteria. It would be a simple matter to put one of them into effect by decree.

Respectfully submitted,

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*Attorneys for Appellees Mann,  
Stone, Webb and Donovan.*

(8274-3)

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In The  
**Supreme Court of the United States**  
October Term, 1963

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**No. 69**

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**LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,**  
*Appellants,*

v.

**HARRISON MANN, ET AL.,**  
*Appellees.*

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Appeal from the United States District Court for the  
Eastern District of Virginia, at Alexandria

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**BRIEF ON BEHALF OF INTERVENING APPELLEES**

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**I. THE QUESTIONS PRESENTED**

In view of the admission of appellants that the Three Judge Federal Court had jurisdiction to hear this cause pursuant to *The Civil Rights Act*, Title 42, United States Code, Sections 1983, 1988, et seq., the questions presented are as follows:

(1) Where a Three Judge Federal Court has found that as a matter of law and fact a state has malapportioned legislative representation so as to effect invidious discrimination in violation of the 14th Amendment To The Constitution Of The United States with respect to residents of certain political

subdivisions within said state, should the Federal Court have to abstain from granting relief until a State Court is given an opportunity to do so?

(2) Where the value of the vote of a resident of one particular locality is diluted one-half or more than that of a resident of another political subdivision, without rational basis, have the residents of the devalued locality been deprived of the equal protection of the laws in contravention of the 14th Amendment to The Constitution Of The United States?

## **II. STATEMENT OF THE CASE**

In view of the statement on page 4 of the appellant's brief that "the only evidence introduced by the appellees in the court below, which might be considered material, dealt with population figures", a completely independent statement of the case is here set forth:

### **A. Intervening Petitioners**

Intervening petitioners are citizens and qualified voters of the City of Norfolk, Virginia, who filed as intervenors in the principal suit herein to have declared unconstitutional state legislative apportionment statutes passed by the Virginia General Assembly in its 1962 session.

### **B. Background Of The Case**

Section 43 of the Constitution of Virginia, Code of Virginia of 1950, Volume 9, Page 458, requires

' The 40 seats in the Senate of Virginia were allocated to localities by Chapters 635 of the Acts of Assembly of 1962, Section 24-14, as amended by the Code of Virginia of 1950; the 100 seats in the House of Delegates were allocated to localities by Chapter 638 of the Acts of Assembly, Section 24-12, as amended, of the Code of Virginia of 1950.

the Senate and House of Delegates of the General Assembly of Virginia to be reapportioned following the decennial taking of the national census, which officially fixes the population of the State of Virginia. The Constitution contains no criteria for reapportionment and leaves the mechanics of allocating representation entirely to the discretion of the legislature.

The first reapportionment required by the Constitution after World War II was to have taken place at the regular session of the legislature, which convened in January 1952. At this session a study commission consisting of legislators appointed by the Governor recommended that Norfolk, together with other growing sections of the state, be awarded additional representation and the controlling factor in allocating Norfolk additional representation was the increase in its total population, including military personnel.\*

The legislature refused to follow the committee's recommendations and adjourned without any reallocation of representation and Governor John Battle convened a special session of the legislature for the purpose of reapportioning the state, and House and Senate bills were passed in four days granting Norfolk an additional delegate based upon

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\* In 1950 the Virginia Commission on Redistricting had as a member, now Governor, Albert S. Harrison, who was then a state Senator. Recommendation No. 56 of the Official Report to the State Legislature reads as follows: "An additional delegate should be given to give Norfolk City six for a population of 213,513."

total population, including military personnel.\*

In 1960 in anticipation of the Constitutional mandate to reapportion in 1962, Norfolk's state Senators, among others, introduced a resolution for a study commission composed solely of state legislators to prepare a plan of reapportionment during the two-year interim adjournment of the Assembly. The resolution failed to pass and the General Assembly adjourned without making any preparation for the reapportionment responsibility of 1962. This legislative abrogation of responsibility required Governor J. Lindsay Almond to appoint a reapportionment study committee consisting of legislators and leading citizens from representative areas throughout the state. This committee held hearings throughout the state and commissioned the Bureau of Public Administration of the University of Virginia to study and make recommendations to the committee as to a fair and equitable plan for reapportioning representation. The Bureau of Public Administration made a report on the problems of reapportionment and redistricting, (Exhibit P. 2, R. 89) a Plan A and B for reapportioning the House of Delegates (Exhibit P. 3, 5, R. 101, R. 119) and a Plan A, B and C for reapportioning the Senate. (Exhibit P. 7, P. 8, P. 10, R. 126, R. 140 and R. 151) The committee studied these plans and then submitted to the Governor a plan of its own. (Exhibit P. 12, R. 159, known as the "Hoover Report").

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\* Virginia General Assembly House Journal For Special Session, 1952:

Session convened December 2, 1952; House Bill for reapportioning House passed 89-3 on December 5, 1952; amended by Senate and passed 35-4 on December 6, 1952; Senate amendment approved by House of Delegates on December 6, 1952, 93-0; Senate Bill for reapportioning Senate passed Senate December 5, 1952, 34-6; Senate Bill approved by House December 6, 1952, 91-4; Governor signed into Law December 15, 1952.

House Plans A and B and the Hoover Report awarded Norfolk a seventh Delegate and Senate Plans A, B and C and the Hoover Report awarded Norfolk a third Senator.

The 1962 session of the Virginia General Assembly convened January 10, 1962. On February 19, the Senate Privileges And Elections Committee appointed a sub-committee to consider the question of reapportionment. The sub-committee held no public hearings, and kept no minutes, but reported to the full committee in executive session eight days later, rejecting substantially all of the recommendations of the Hoover Commission and allowing no increase in representation for the City of Norfolk, even though Norfolk's population had substantially increased.<sup>4</sup>

The Senate passed the bill on March 1, 1962. The House Of Delegates, acting similarly, appointed a

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<sup>4</sup> Although Norfolk's population in the ten years between 1950 and 1960 had increased 91,356, its representation in the Virginia General Assembly was not altered and remained the same. Norfolk's two senators now represent 152,435 citizens each, and its index of representation is .65, the ideal factor being 1.0. On the other hand, the adjacent governmental units of Norfolk County and South Norfolk, now Chesapeake City, have one Senator who represents only 73,647 citizens, and their representation index in the Senate is 1.35. This unit lost 36,724 citizens between 1950 and 1960.

Plaintiff's Exhibits established that the value of the vote of citizens of 33 political sub-divisions exceeded the value of the vote of a citizen of Norfolk from 90% to 147%. The favored political sub-divisions were: The counties of Albemarle, Amelia, Amherst, Appomattox, Botetourt, Brunswick, Buckingham, Charlotte, Clarke, Culpepper, Cumberland, Dickenson, Dinwiddie, Fauquier, Fluvanna, Frederick, Giles, Goochland, Greene, Greensville, Halifax, Loudoun, Louisa, Lunenburg, Madison, Mecklenburg, Nelson, Norfolk, Nottaway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Shenandoah, Spotsylvania, Surry, Tazewell, Wise, Wythe; and the cities of Charlottesville, Fredericksburg, Hopewell, Norton, Petersburg, South Boston, South Norfolk and Winchester.

sub-committee on February 20, to consider the recommendations of the Hoover Commission. This committee on February 27, reported a plan of token apportionment that, likewise, deprived Norfolk of the additional representation in the House that was recommended by the Hoover Commission and by House Plans A and B of the Bureau of Public Administration of the University of Virginia. The sub-committee's bill was voted out of the House Privileges And Elections Committee on February 27 and passed the House on March 2. This action by the General Assembly presented Norfolk with a plan of reapportionment that allowed an additional Delegate to the adjacent City of Virginia Beach, where population had increased, but denied additional House and Senate representation to Norfolk, where population had increased by Forty (40%) Per Cent, and permitted the adjacent City of Chesapeake to retain a seat of its own in the Senate, notwithstanding substantial diminution in population. The index value of the vote in the City of Chesapeake for the State Senate is One Hundred Thirty-Five (135%) Per Cent and for the City of Norfolk Sixty-Five (65%) Per Cent. (R.234,235)

The principal suit to invalidate this reapportionment was filed April 9, 1962, and the intervening petition on behalf of Norfolk was filed May 25, 1962. The Court ordered pre-trial briefs to be filed and a brief on behalf of intervening petitioners, addressed to the merits of the case, was filed on July 20, 1962, and on September 20, the Attorney General filed a reply brief limited solely to the doctrine of abstention and reasons for dismissing the suit. The case was heard by the Three Judge Court on October 22-23, 1962, and during the trial the office of the Attorney General failed to produce a single witness,

or legislator to prove the rationale of the apportionment statutes under attack.

Petitioners and intervening petitioners offered Seventeen (17) Exhibits and the deposition of Dr. Ralph Eisenberg, who headed the study made for the Hoover Commission on Reapportionment. (R. ii,iii) Dr. Eisenberg, an authority on the subject, testified without contradiction that the disparity in the value of the vote for the state Senate between the citizens of Norfolk and the adjacent community of Chesapeake exceeded the maximum tolerance consistent with fair apportionment. (R.235)

On November 28, 1962, Circuit Judge Albert V. Bryan handed down the majority opinion of the Three Judge Court, declaring the subject statutes unconstitutional and entered a decree enjoining elections pursuant to the unconstitutional acts and afforded the Virginia General Assembly until January 31, 1963, to meet and reconsider a fair and equitable reapportionment. This Court subsequently stayed this decree.

### C. What The Instant Case Decided

The majority opinion below held that Virginia does not follow the Federal Legislative System, as do other states and, therefore, in Virginia there is no difference in status between Senators and Delegates and the applicability of the Federal analogy to the state legislative bodies was not involved in this case, as it was in *Scholle v. Hare*, (1962) 369 U.S. 429, 82 S. Ct. 910.

The Court found a wide disparity in the value of the vote of the citizens of Norfolk and other areas of the state, without basis in fact or reason. The Court held that a wide disparity in the value of an individual's vote from section to section within a

state without rational basis constituted invidious discrimination.<sup>5</sup>

### III. SUMMARY OF THE ARGUMENT

A. In Cases Arising Under The Federal Civil Rights Act The Federal Courts Will Not Abstain Where There Is No Substantial Underlying Question Of State Law That Is Peculiarly Susceptible To State Court Interpretation.

*McNeese v. Board of Education* (1963) 371 U.S. 933, 83 S. Ct. 1433, clearly holds that Federal Courts will grant relief to persons claiming under the Civil Rights Act to have been aggrieved by deprivation of federal human rights where no controlling underlying issue of state law requires interpretation.

Therefore, cases such as *Railroad Comm. of Texas v. Pullman Co.*, (1941) 312 U.S. 496, 61 S. Ct. 643, where the interpretation of a Texas statute could have been determinative of the case, or *Thompson v. Magnolia Petroleum Co.*, (1940) 309 U.S. 478, 60 S. Ct. 628, where unsettled questions of state property law would largely determine the legal rights of the parties, or *Harrison v. N.A.A.C.P.*, (1959) 360 U.S. 167, 79

#### <sup>5</sup> Lower Court Opinion (R. 67):

"Indulging all of the reasonable inferences which may be fairly drawn from the redistricting, we can find no rational basis for the disfavoring of Arlington, Fairfax, and Norfolk. No acceptable formula, plan or design is shown us to account for the disparate divisions of the State. We do not mean to establish an allowable tolerance of divergence from the ideal district — whether more or less than a specified per centum. Nor do we intend to say that there cannot be wide differences of population in districts if a sound reason can be advanced for the discrepancies. We merely say none is offered here."

S. Ct. 1025, where "lengthy, detailed and sweeping" Virginia statutes were "fairly open to interpretation," or *Pennsylvania v. Williams*, (1935) 294 U.S. 176, 55 S. Ct. 380, where the private interests would suffer no harm in allowing a duly appointed state officer to perform his duty pursuant to state insolvency laws as he had requested are not applicable.

In each case cited by the appellants there has been a similar consideration which led the Court to abstain.

At page 24 of appellants' brief, it is conceded that Sections 24-12 and 24-14 of the Code of Virginia require no interpretation. Section 43 of the Constitution is as free of ambiguity as are the statutes.

It is apparent on the record in this case that a determination of the 14th Amendment's meaning is absolutely necessary for the determination of this case.

A decision on the merits of this case will not result in a "needless friction with state policies".

This Court has decided in *Baker v. Carr*, (1962) 369 U.S. 186, 82 S. Ct. 691; *W. M. C. A., Inc. v. Simon*, (1962) 370 U.S. 190, 82 S. Ct. 1234; *McNeese v. Board of Education*, (1963) 371 U.S. 933, 83 S. Ct. 1433, and *Lane v. Wilson*, (1939) 307 U.S. 268, 59 S. Ct. 872, that federal courts will exercise their jurisdiction in cases such as this.

B. The Dilution Of The Value Of  
Petitioners' Vote Without Reason  
Constitutes Invidious Discrimination

The Lower Court's finding of fact that the legislative representation disfavoring Arlington, Fairfax and Norfolk was without rational basis is

supported by the record and dictates its conclusion that unconstitutional invidious discrimination had been proved. (R. 67)

Intervenors proved that an unbiased Commission, consisting of legislators and citizens appointed by the Governor of Virginia, had recommended that Norfolk, with a population of 304,869, should be allocated three Senators and seven Delegates in the state legislature. A similar recommendation was made by the Bureau Of Public Administration of the University Of Virginia:

With a state population of 3,966,949, ideally, one Senator would represent 99,174 persons and one Delegate 39,669 persons. (R. 61,63)

By reason of a 91,356 increase in population since 1950, a Norfolk Senator represents 152,435 people and in the adjacent City of Chesapeake, a Senator represents only 73,647 persons and in the district composed of the Town of Culpepper and the Counties of Fauquier and Loudoun, only 63,703. There are eleven districts that are nearly One Hundred (100%) Per Cent richer in each vote's worth than Norfolk. (R.61)

A Norfolk Delegate represents 50,812 persons, while a Delegate from Shenandoah represents only 21,825 persons. Like disparities exist in other districts.

Appellants contention that military related population should not be considered in an effort to reduce disparities is untenable. The Virginia legislature has historically employed population as enumerated by the decennial United States census as a decisive factor in legislative reapportionment. As a matter of fact, the last reapportionment effected by a Special Session of the General Assembly in 1952 award-

ed Norfolk an additional delegate based upon the 1950 census count of 213,513 persons, including military related population, which represented an increase of 69,181 over the 1940 census.

Norfolk has now been denied additional representation notwithstanding a 1960 census increase of 91,356 to a total population of 304,869.

Finally, appellants attempt to justify the effect of Virginia's intrasectional disparities in representation by comparing the degree to that existing in other states fails, for the measurement of the effect of discrimination must be limited to the area in which it is practiced.

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#### IV. ARGUMENT

##### A. The Federal Civil Rights Act Required The Lower Court To Exercise Jurisdiction

This suit was brought alleging a violation of the Federal Civil Rights Act, 42 United States Code, Sections 1983 and 1988, and jurisdiction in the District Court was founded upon 28 United States Code, Section 1343.

This Court recently held that a school desegregation suit out of Illinois was properly decided upon its merits by the Federal Courts, notwithstanding the fact that the Illinois Constitution prohibited the conduct complained of and provided a statutory remedy.

In *McNeese v. Board of Education* (1963), 371 U.S. 933, 83 S. Ct. 1433, Mr. Justice Douglas, speaking for eight members of the Court, said at page 1435 of 83 S. Ct.:

"We have previously indicated that relief under the Civil Rights Act may not be defeated because relief was not first sought under state law *which provided a remedy*. We stated in *Monroe v. Pape*, 365 U.S. 167, 183, 81 S. Ct. 473, 482, 5 L. Ed. 2d 492:

'It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.'

"\* \* \*

"\* \* \* The purposes (of the Civil Rights Act) were several fold — to override certain kinds of state laws, to provide a remedy where state law was inadequate, 'to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice' \* \* \* and to provide a remedy in the federal courts supplementary to any remedy any State might have \* \* \*.

"We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court. \* \* \*"

"\* \* \*

"\* \* \* It is immaterial whether respondent's conduct is legal or illegal as a matter of state law. \* \* \* Such claims are entitled to be adjudicated in the federal courts. (Citing cases)". (Italics Supplied)

In *Browder v. Gayle*, (M.D. Ala. N.D., 1956) 142 F. Supp. 707, (affirmed *per curiam*, 352 U.S. 903, 77 S. Ct. 145) the validity of Alabama State laws and Montgomery city ordinances were in issue. Injunctive relief was prayed for. The defendants there urged abstention for reasons of comity, until the

State Courts could construe the validity of the contested statutes and ordinances. The District Court, speaking through Circuit Judge Rives, said at page 713:

*"The short answer is that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts." (Italics Supplied)*

*Lane v. Wilson*, (1939) 307 U.S. 268, 59 S. Ct. 872, is closely analogous to our case. In *Lane*, a colored Oklahoma resident brought suit under the Civil Rights Act, R. S. Section 1979, (now 42 United States Code Section 1983) for money damages alleged to have been sustained by reason of racial discrimination in violation of the Fifteenth Amendment. Said Mr. Justice Frankfurter for the Court at page 274 of 307 U.S.:

"\* \* \* The basis of this action is inequality of treatment though under color of law, not denial of the right to vote."

In essence, that is the claim of the appellees here, although here the Fourteenth Amendment is involved.

Mr. Justice Frankfurter further continued with respect to the contention that the state courts should have the first opportunity to construe the portions of the Oklahoma laws complained of:

"\* \* \* Barring only exceptional circumstances, \* \* \* or explicit statutory requirements

\* \* \* resort to a federal court may be had without first exhausting the judicial remedies of state courts. *Bacon v. Rutland*, 232 U.S. 134; *Pacific Tel. & Tel. Co. v. Kuykendall*, 265 U. S. 196."

Therefore, held the Court, finding no such circumstances or statutes to be present:

"We cannot avoid passing on the merits of plaintiff's constitutional claim."

There are no more "exceptional circumstances" or "explicit statutory requirements" existing in the case at bar than were present in *Lane*. There is no more need for abstention here than there was in *Lane*. There is as much necessity for adjudicating the constitutional question here as there was in *Lane*. *Lane* is a compelling precedent in this case. *Doud v. Hodge*, (1956) 350 U.S. 485, 76 S. Ct. 491; *Hague v. C. I. O.*, (1939) 307 U.S. 469, 59 S. Ct. 954; and *Gray v. Sanders*, (1963) 372 U.S. 368, 83 S. Ct. 801.

Abstention is not an automatic procedure even in cases involving the construction of state statutes. *N.A.A.C.P. v. Bennett*, (1959) 360 U.S. 471, 79 S. Ct. 1192.

The right alleged here is just as plainly federal "in origin and nature" as were those claimed in *Brown v. Board of Education*, (1954) 347 U.S. 483, 74 S. Ct. 686, and *McNeese v. Board of Education*, (1963) 371 U.S. 933, 83 S. Ct. 1433, where federal jurisdiction was accepted and exercised despite state statutes and constitutions lurking in the background.

These decisions and the reasons underlying them are implicit in the opinion of this Court in *W.M.C.A., Inc. v. Simon*, (1962) 370 U.S. 190, 82 S. Ct. 1234, where the court remanded the case to the District Court for a consideration on its merits.

A statement by Judge Murrah in *Stapleton v. Mitchell*, (D. C. D. Kansas, 1945) 60 F. Supp. 51, 55 (Appeal dismissed, 326 U.S. 690) which was quoted with approval in *McNeese*, (1963) 371 U.S. 933, 83 S. Ct. 1433, footnote 6, states the appellee's views:

"We yet like to believe that wherever the federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum."

At the least, cases arising in the Federal Courts under the Civil Rights Act, in light of the foregoing decisions, are to be decided on the merits, if no substantial and controlling state statute requires State Court interpretation first.

On the broadest reading of these cases it is immaterial as to whether or not there is a state statute to be construed, because there is a point at which comity must yield to uniform interpretation of the Federal Constitution.

One thing is apparent from a review of these authorities. Cases applying the doctrine of abstention, where the claim for relief is founded on some statute other than the Civil Rights Act are inapplicable to the facts in the instant case. Stated otherwise, the Federal Courts have been extremely reluctant to invoke the doctrine of abstention in Civil Rights Act cases.

It follows that the District Court, in accordance with existing law, properly decided this case on the merits. The Supreme Court should do likewise.

B. Dilution Of The Value Of The  
Vote Of Intervening Petitioners,  
Without Rational Basis, De-  
prives Them Of Equal Protec-  
tion Of The Law In Contraven-  
tion Of The Equal Protection  
Clause Of The Fourteenth  
Amendment To The Constitution  
Of The United States

The principal point involved in this appeal is whether certain citizens of Virginia, including those of Norfolk, have been the object of invidious discrimination in the apportionment of representation in the state legislature.

The Three Judge Federal Court below found as a matter of fact that they had been, on the basis that there was no rational basis for the disfavoring of Arlington, Fairfax and Norfolk (R. 67) and that such discrimination constituted invidious discrimination prohibited by the Equal Protection Clause of the Fourteenth Amendment.

The token reapportionment passed by the 1962 Legislature is a crazy-quilt without rational basis.

The evidence established that the value of the vote of citizens of 33 political sub-divisions exceeded the value of the vote of a citizen of Norfolk from ninety per cent (90%) to one hundred forty seven per cent (147%). See footnote 4.

A citizen of Arlington, Fairfax and Norfolk is provided representation or voting power in the Senate of less than half that possessed by a citizen of any of six of the other thirty-three remaining districts in the state. (R. 61) In the House, a vote of Fairfax has less than one-fourth of the voting force in four other districts. (R. 63)

The Commonwealth contends that military related citizens should not be counted in Norfolk, but should be counted in the adjacent City of Virginia Beach, which was allocated an additional delegate based upon total population, including the military.

The present plan also contains horizontal discrimination that embroiders this "crazy-quilt" of

reapportionment, for the plan discriminates against rural areas without reason.\* Appellants can suggest only two theories to justify the existing plan, namely, there is not as great a degree of voter discrimination as in some other states and the disparity in the value of the vote in Norfolk and Northern Virginia could possibly be explained if the military related citizens were not considered.

1. The Measure Of Discrimination  
Is Limited To The Area In  
Which The Discrimination Is  
Practiced

Appellants concede that there is a population disparity of better than two to one, in both the House and Senate without reference to whether or not you count military related population. Appellants attempt to justify this sectional discrimination by pointing to greater disparities existing in

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\* Following the 1950 census, Russell County in southwest Virginia, had a population of 26,818 and was allocated one delegate. The County of Shenandoah, with 21,169 citizens, was allocated one delegate and Southampton County, with a population of 26,522 was allocated one delegate. All three counties are primarily rural and consist of one governmental sub-division.

As a result of the 1960 census, Russell County had 26,290 citizens; Shenandoah 21,825, and Southampton had 27,195. From a reapportionment standpoint these populations would be considered stable. However, when the Virginia General Assembly took three delegates away from the independent minded mountain folk of southwest Virginia, they deprived Russell County of its delegate and combined it with Dickenson County with a population of 20,211 people, making a total of 46,501 people in a mountainous territory to be represented by one delegate, and reduced the index value of the vote of those citizens to .85. On the other hand there was no dilution of the vote in Shenandoah County or in Southampton County.

The land area of Shenandoah and Russell Counties are substantially the same, Russell County having 483 square miles and Shenandoah 507 square miles. (See Virginia General Assembly Register (1940-1960).)

other states. This is not the test of discrimination. Appellants would argue as a defense to a discrimination suit brought by a Negro citizen of Virginia, that there was more discrimination in Alabama. Discrimination with respect to the citizen of Virginia must be measured by what is being done to him in Virginia and not in some other state. This principle is peculiarly applicable to what constitutes apportionment discrimination in Virginia.

Virginia's founding fathers were dedicated to a republican form of government and its citizens have been bred to expect the same and have sought it through the years, notwithstanding the congenital reluctance of political office-holders to conform to the essential of a republican form of government, i.e., equal representation.

The problem of conforming the politician's appetite for control to the principles of a republican form of government is stated in a letter written by Thomas Jefferson, June 12, 1816, as it appears on page 475 of the *Debates Of The 1829-30 Constitutional Convention Of Virginia*:

"The question you propose on equal representation, has become a party one, in which I wish to take no public share. Yet if it be asked for your own satisfaction only, and not to be quoted before the public, I have no motive to withhold it, and the less from you, as it coincides with your own. At the birth of our Republic I committed that opinion to the world, in the draught of a Constitution annexed to the Notes on Virginia, in which a provision was made for a representation permanently equal. The infancy of the subject at that moment, and our inexperience of self-government occasioned gross departures in that draught from genuine republican canons. In truth, the abuses of monarchy had so much filled all the space of political contemplation, that we imagined every thing

republican that was not monarchy. *We had not yet penetrated into the mother principle, that "Governments are republican only as they embody the will of their people and execute it."* Hence, our first Constitutions had, really no principle in them. But experience and reflection have more and more confirmed me in the particular importance of the representation then proposed. On that point, then, I am entirely in sentiment with your letters, &c.

"'But inequality of representation in both Houses of our Legislature is not the only republican heresy in this first essay of our revolutionary patriots, at forming a Constitution. For, let it be agreed that Government is republican in proportion as every member composing it has his equal voice in the direction of its concerns (not indeed in person, which would be impracticable beyond the limites of a city or small township, but) by representatives chosen by himself and responsible to him at short periods; and let us bring to the test of this canon every branch of our Constitution.

"'In the Legislature, the House of Representatives is chosen by less than half the people, and not at all in proportion to those who do choose. The Senate are still more disproportionate, and for long terms of responsibility. In the Executive, *the Governor is entirely independent of the choice of the people and of their control; his Council equally so, and at best but a fifth wheel to a waggon.*'

"'Again, "But it will be said, that it is easier to find faults than to amend. I do not think their amendment so difficult as is pretended. Only lay down true principles and adhere to them inflexibly. Do not be frightened into their surrender by the alarms of the timid, or the croakings of wealth against the ascendancy of the people. If experience be called for, appeal to that of our fifteen or twenty Governments for forty years, and shew me where the people

have done half the mischief in these forty years, that a single despot would have done in a single year, or half the riots and rebellions, the crimes and the punishments, which have taken place in any single nation under Kingly Government during the same period. The true foundation of republican government is the equal rights of every citizen in his person and property, and in their management. Try by this, as a tally, every provision in our Constitution and see if it hangs directly on the will of the people. Reduce your Legislature to a convenient number, for full, but orderly discussion. *Let every man who fights or* ~~may~~ *exercise his just and equal right in their election.* Let the Executive be chosen in the same way, and for the same term, by those whose agent he is to be, and have *no screen of a Council,* behind which to skulk from responsibility." (Italics Supplied)

Every modern day Constitution of Virginia has required that there be a reapportionment of the state legislature following the taking of the decennial census of the United States and the current Governor of Virginia has admitted that historically population has been utilized as the principal factor in redistricting Virginia (R. 65)

As a matter of history, Section 6 of the Constitution Of Virginia of 1864 placed particular emphasis on the enumeration of the inhabitants of the state<sup>7</sup> as the principal criterion for reapportioning legislative representation.

The Constitutional Convention of 1902 was the

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<sup>7</sup> Constitution of 1864, Section 6:

It shall be the duty of the general assembly, in the year one thousand eight hundred and seventy, and in every tenth year thereafter, to reapportion representation in the senate and house of delegates among the cities of Norfolk and Richmond and the several counties, from an enumeration of the inhabitants of the state.

first to attempt to deal with what was then deemed to be the problem of the newly emancipated Negro citizen and the words "from an enumeration of the inhabitants of the state" were removed from the constitutional mandate, but the necessity for reallocating representation following the census was maintained.

The Senate of Virginia emphasized the continuing importance attached to numbers in considering representation questions when it passed Senate Joint Resolution No. 13 in 1962, memorializing Congress to provide for the election of the President and Vice-President of the United States by Congressional Districts rather than through the medium of the Electoral College. The resolution provided, in part, as follows:

"Whereas, such method gives undue weight, in states where the political parties are almost equal in strength to minority groups which can deliver only a small number of votes but may be able to control the entire electoral vote of the state, thereby exercising an influence disproportionate to their numbers;"

Appellants in their brief boast that the General Assembly of Virginia has "faithfully" followed the mandate to reapportion found in Section 43 of the Constitution of 1902 (Appellants' Brief, 10). The fact is that a relatively stable population prior to World War II tolerated token reapportionment and when the Assembly was presented with its first substantial population growth to be dealt with following the taking of the 1950 census it refused to effect any degree of reapportionment. The debates and proceedings of the Virginia legislature are not reported and one must resort to newspaper accounts

of the proceedings.\* Public opinion was marshalled

**\* The Richmond News Leader, Thursday, March 27, 1952**

"What is it worth to Virginians to uphold the principle of republican government? What price tag can be placed on fulfillment of an oath to support the State Constitution?

"Those are questions that might well be pondered by members of the General Assembly in deciding whether to reconvene in an extra session some time before the end of 1952. The short answer, it seems to us, is that principle and honor are without price, and precisely these intangibles — nothing more and nothing less — are at stake in the issue of redistricting the General Assembly. Delegate Armistead Boothe, of Alexandria, merits public thanks for pressing the issue.

"Nothing could be plainer than the inequities in representation that now exist in Virginia's Legislature. Rural areas are far over-represented; urban areas — notably Norfolk-Portsmouth and Arlington-Alexandria — are far under-represented. One voter in Halifax County carries more than twice the weight of a voter in urban Fairfax."

**The Richmond Times-Dispatch, Saturday, March 29, 1952**

"Section 43 of the State Constitution provides that 'a re-apportionment shall be made in the year 1932 and every 10 years thereafter'. By design, or otherwise, this provision as to districts in the State Legislature is less specific than Section 55, which provides, with respect to congressional districts, that they 'shall be composed of contiguous and compact territory containing as nearly as practicable, an equal number of inhabitants.

"Various Virginia Legislatures have taken advantage of the unspecific language of Section 43 to evade its moral implications by reshuffling a couple of districts and calling that a 're-apportionment'. Such by-passing of the requirement does not carry out the intent of the section, whatever the legal hair-splitters may say.

"The General Assembly of 1952 should have attended to this matter at its regular session, in accordance with the Constitution's intent. Instead, after an abysmally inadequate discussion, the Senate passed a phony bill, making inconsequential changes in only three out of 115 districts. This bill was killed in the House, at the very end of the session. Hence, the only thing left was a special session later in the year, or action at the regular session of 1954.

"It would carry out the intent of the Constitution and correct immediately the glaring inequities in the population of many districts. These inequalities are so tremendous

and the Governor called a special session and the areas with an increase in population were given additional representation in 1952.

The citizens of Norfolk, having through the years received that to which they were entitled, naturally feel deeply the result of each area adjacent to it being favored by the token reapportionment plan of 1962 and their being discriminated against. The effect of such discrimination on the people of Norfolk cannot be eased by telling them that the residents of New York City, Alabama, Georgia or Florida are discriminated against even more. Courts have defined the word "invidious" by adopting the definition in Webster's International Dictionary:

(Footnote 8 Continued)

that the task of making necessary adjustments must not be dodged. It is the lawmaking body's special responsibility to see that these inequalities are corrected in the year 1952, as called for by the fundamental law of the Commonwealth."

**The Norfolk Virginian Pilot, Sunday, March 30, 1952**

**"A. Virginia Scandal That Demands Undoing**

"The Washington scandals and the national presidential campaign should not cause Virginians to forget for one moment that one of the crudest political decisions of the year was made right in Richmond by the Virginia General Assembly. This was the decision not to redive the Legislature's seats despite the great changes in population in the past decade.

"Hair-splitters may find some weak precedents and excuses. But there are no loopholes in section 43 of the State Constitution:

"The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year 1932 and every ten years thereafter."

"It is possible, of course, that the legislators may reassemble and put through a phony apportionment. But aside from considerations of decency, such an action would be politically very short-sighted. It would alienate the large and growing areas from candidates for Statewide offices who are affiliated with the dominant majority in the Legislature."

"1. Tending to excite odium, ill will, or envy; likely to give offense, esp. unjustly and irritatingly discriminating; as invidious distinctions."

In this particular case the backyard of some of the citizens of Norfolk are adjacent to the backyards of some of the citizens of Chesapeake and Virginia Beach. For a resident of Norfolk to know that the people of Chesapeake have twice or One Hundred (100%) Per Cent more weight per capita in the state Senate than he does, cannot help but excite ill will and envy. It is certainly unjustifiably and irritatingly discriminating.

2. Virginia Has Historically Considered Its Total Population In Reapportioning Representation, Including Military Related Inhabitants

Other than the vain effort to justify the invidious discrimination that the Lower Court found existing by comparing such discrimination to that existing in other states, the remaining suggestion of appellants is that the Legislature could have eliminated persons employed in the military service of the nation and their families in considering what constituted the population of the various political sub-divisions of Virginia for the purpose of reapportionment. The elimination of these citizens cannot be supported by fact or principle.

The fact the military has been an integral part of the State of Virginia and particularly the City of Norfolk since pre-Revolutionary days is a good reason why the State Constitution *does not exclude* this portion of the population from the apportionment census as do the constitutions of Alabama, Washington and Wisconsin.

The military has been an essential part of Norfolk's citizenry since Lord Dunmore fired the City on January 1, 1776.

Appellants thought so little of this point in presenting their case below that they failed to devote a single line in any of their briefs to the contention. The only evidence consisted of census statistics showing the number of citizens employed in the military service at the time of the taking of the 1960 census (R. 320)

Historically, Virginia, in considering population as a basis for reapportionment, has taken the total census figure of all areas of the state. This means that college students residing in Richmond, Charlottesville and Williamsburg have been allocated as citizens to be represented in those particular areas; prisoners and inmates of mental institutions have been allocated as residents of the particular institution to which they were confined on the day of enumeration. (R.315)

As heretofore noted, Thomas Jefferson in 1816 stated: "Let every man who fights or pays exercise his just and equal right in their election. \* \* \*"

Every ten years an official State Commission on Reapportionment has reported to the Governor. In 1940 a report was filed as House Document No. 6 and recommended that reapportionment be abated until the 1940 census of the United States could be

received.\* In 1941 the Reapportionment Commission reported its recommendation in House Document 5 and used the total population figures reflected by the United States census as the population basis for reapportioning the state. Norfolk was awarded two Senators on a total population basis of 144,332 (Page 6, House Document No. 5, 1941).

As heretofore noted, a Redistricting Commission was constituted and studied the question of the 1950 decennial reapportionment and reported by House Document No. 15 in 1951. Now Governor, Albertis Harrison, was then a state Senator and his Commission used Norfolk's total census population,

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\* Report Of Commission On Redistricting, House Document No. 6, (1940) Page 15:

"To reapportion the State at this time, it would be necessary to use the census of 1930, modified and corrected, in so far as possible, by such scanty additional information as might be adduced. The new districts might therefore, upon their creation, be ten years out of date, and any conformity which might be achieved with the 1940 population would be largely coincidental.

"To follow such a course at this time, without waiting for the 1940 census of the United States to show the actual present population, does not seem wise to this Commission. Nor did it appear wise to the majority of those who appeared before the Commission during the course of its public hearing in Richmond on November 17, 1938. Only one delegation, all representing the same general locality, expressed at that hearing a contrary opinion.

"In view of the situation reviewed above, the Commission recommends that no legislation be enacted at the 1940 session of the General Assembly reapportioning the State into Senatorial and House districts and that such reapportionment be deferred until the session of 1942, when the United States census figures for 1940 will be available. In order to assist the General Assembly at that time, and in order to collect and present facts upon the basis of which it may take action, the Commission recommends that there be created by the General Assembly during the 1940 session a Commission to continue the study and to recommend to the 1942 session of the General Assembly a plan for redistricting the Senate."

including military, of 213,513 as justifying increasing representation in the House of Delegates from six to seven Delegates.<sup>10</sup>

In addition, the *Register of the General Assembly of Virginia (1940-1960)*, an official state publication uses the total population of the federal census in referring to the population of the respective political sub-divisions of the state.

In 1961 the Hoover Commission on Redistricting followed the previous policy of the state and included total population as documented by the United States census in recommending that Norfolk's representation in the Senate be increased to three and in the House of Delegates to seven.

The only witness to testify concerning the criteria employed by the Hoover Commission in arriving at a reapportionment plan was Dr. Ralph Eisenberg, and appellants did not question his use of total population figures.

Appellants on page 27 of their brief, allude to a record in a state court case brought subsequent to the instant case by different litigants to enjoin the holding of a Democratic Primary or General Election in November 1963. Appellants state the plaintiffs introduced the same evidence that is now before this Court, which is an inaccurate statement. Plaintiffs in the state court action produced a member of the Hoover Commission, who, likewise, was a member of the General Assembly, who testified that neither the Commission nor the Assembly gave any thought to eliminating military related citizens from the population basis to be used for reapportionment. Appellants suggest that in this unrelated state court case exhibits showed a rational and practical jus-

<sup>10</sup> See Recommendation 56, Page 8, House Document No. 15, 1951

tification for the exclusion of military population. This is not a correct statement of a record not before this Court.

Aside from the fact that the policy in Virginia has been not to exclude military related persons from reapportionment considerations, appellants must concede that there is no way it could be done with uniformity and consistency. The only evidence to which they point is table 115 of defendant's exhibit 11, which is improperly set up on Record 318. Record 318 states the statistics as to persons employed by the military are available for cities and counties of 25,000 or more, where in fact table 115 provides such statistics only for areas of 250,000 or more and one can only guess as to how many of these individuals are married or have children..

Appellants will concede that no effort was made in any reapportionment analysis to exclude military related population from Prince George County, where 13,608 of a total population of 20,000 were military related. It will be further conceded that there is no appreciable difference between the proportion of military population in the adjacent City of Virginia Beach, formerly Princess Anne County, and that of Norfolk, and yet the apportionment which appellants seek to defend granted the City of Virginia Beach an additional Delegate based upon the increased population, including military related citizens.

The Virginia Constitution contains numerous references to the policy of the state to include total inhabitants in governmental functions."

"Art. 3 "a majority of the community" has "right to reform, alter, or abolish "any government".

Art. 55 Congressional districts shall contain "as nearly as practicable an equal number of inhabitants."

The Court below was correct in holding that the evidence relating to the exclusion of military related citizens was neither explicit nor satisfactory.

**C. Suggested Rule For Testing A Violation Of The Fourteenth Amendment In State Legislative Apportionment Cases**

This case and others similar thereto, which will be heard by this Court, offer an opportunity to establish a guideline for lower courts to determine when a state legislative apportionment plan violates the Fourteenth Amendment.

It is submitted that a republican form of government requires that it be as representative as possible. Although *Gray v. Sanders*, (1963) 372 U.S. 368, 83 S. Ct. 801, does not attempt to establish the

(Footnote 11 Continued)

Art. 95 " \* \* \* But no new circuit court shall be created containing by the last United States census or other census provided by law less than 40,000 inhabitants, nor when the effect of creating it will be to reduce the number of inhabitants in any existing circuit below 40,000 according to such census.

Art. 98 For the purpose of judicial systems, cities of the state are divided into 2 classes. "Cities having a population of 10,000 or more as shown by the last United States census or other census provided by law, shall be cities of the first class, etc."

Art. 116 Definition of "cities and towns". " \* \* \* All incorporated communities, having within defined boundaries, a population of 5,000 or more, shall be known as cities \* \* \*. In determining the population of such cities and towns the General Assembly shall be governed by the last United States census or such other enumeration as may be made by authority of the General Assembly; \* \* \*"

Art. 121 Where city has wards, representation shall be allocated in proportion to the population of such ward. Reapportion representation every 10 years.

Art. 135. In apportioning state school funds, Constitution provides that such funds shall be apportioned on the basis of total school population of children between the ages of 7 and 20.

ground rules for state legislative reapportionment suits, it is submitted that it does direct attention to the road this Court will travel. On page 808 of 83 S. Ct., the Court raises this question, and then answers it:

“\* \* \* How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his state, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions.

“\* \* \*

“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing — one person, one vote.”

An extension of this holding to the State of Virginia was done at the Constitutional Convention of 1829-30 by Delegate Taylor of the Borough of Norfolk. Mr. Taylor was quoted as follows:

“The fourth resolution is nothing more than a corollary to the second. It is only the expansion and application of the same principle to representation, which is proposed to the

voters themselves, i.e., that representation shall be uniform, that like numbers shall confer like rights of representation, without regard to the disparity of fortune which may exist in the aggregate." (Italics Supplied)

The principle adopted by this Court in *Gray v. Sanders*, (1963) 372 U. S. 368, 83 S. Ct. 801, was applied to state legislative elections in *Giddings v. Blacker, Secretary of State*, (Mich. 1892) 52 N.W. 944. The Michigan Supreme Court held at page 946:

"\* \* \* It was never contemplated that one elector should possess two or three times more influence, in the person of a representative or senator, than another elector in a district. Each, in so far as it is practicable, is, under the constitution, possessed of equal power and influence. Equality in such matters lies at the basis of our free government. It is guaranteed, not only by the constitution, but by the ordinance of 1787, organizing the territory out of which the State of Michigan was carved. *State v. Cunningham, supra.*"

In the instant case, appellants submitted no rational plan for justifying admitted disparities in representation influence of more than two for one.

It is respectfully submitted that the rule of *Gray v. Sanders*, (1963) 372 U.S. 368, 83 S. Ct. 801, is equally applicable to state legislative apportionment and that a republican form of government requires that state representation shall be uniform and like numbers shall confer like rights of representation. Whenever state legislative apportionment deviates from this controlling principle, invidious discrimination in contravention of the Equal Protection Of The Laws granted by the Fourteenth Amendment will have been established.

## V. CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be affirmed.

Respectfully submitted,

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## PROOF OF SERVICE

I, Henry E. Howell, Jr., one of counsel for the intervening appellees herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26th day of September, 1963, I served copies of the within Brief On Behalf Of Intervening Appellees on the several appellants herein by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: Robert Y. Button, Esquire, Attorney General of Virginia, Supreme Court-State Library Building, Richmond 19, Virginia; R. D. McIlwaine, III, Esquire, Assistant Attorney General, Supreme Court-State Library Building, Richmond 19, Virginia; David J. Mays, Esquire of Tucker, Mays, Moore & Reed, State-Planters Bank Building, Richmond 19, Virginia; and Henry T. Wickham, Esquire, of Tucker, Mays, Moore and Reed, State-Planters Bank Building, Richmond 19, Virginia, and on Edmund D. Campbell, Esquire, Southern Building, Washington, D. C. and E. A. Prichard, Esquire, 106 N. Payne Street, Fairfax, Virginia, counsel for appellees.

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Henry E. Howell, Jr.

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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1963**

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**No. 69**

**LEVIN NOCK DAVIS, SECRETARY, STATE BOARD OF  
ELECTIONS, ET AL., APPELLANTS**

**v.**

**HARRISON MANN, ET AL.**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA**

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## **OPINION BELOW**

The opinion of the three-judge district court (R. 57-79) is reported at 213 F. Supp. 577.

## **JURISDICTION**

The order of the district court was entered on November 28, 1962 (R. 79). The notice of appeal to this Court was filed on December 10, 1962, and probable jurisdiction was noted on June 10, 1963 (R. 81, 83). The jurisdiction of this Court rests upon 28 U.S.C. 1253.

(1)

### QUESTIONS PRESENTED

1. Whether the federal district court, instead of deciding the constitutionality of the apportionment of Virginia's legislature under the Fourteenth Amendment, should have either dismissed or stayed the proceedings to allow a suit to be brought in a State court in order to decide State issues.

2. Whether the apportionment of the Virginia legislature violates the equal protection clause because it discriminates against voters in Arlington and Fairfax Counties and the City of Norfolk without rhyme or reason.

### CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Sections 40 to 43 of Article IV of the Constitution of Virginia are set forth in Appendix A, p. 51. Chapters 635 and 638 of the Virginia Acts of Assembly for 1962 are set forth in Appendix A, pp. 51-56. Sections 17-19 and 23.1 of 24 Virginia Code are set forth in Appendix A, pp. 56-58.

### INTEREST OF THE UNITED STATES

This is one of four cases pending argument on the merits in which the Court will be called upon to formulate under the Fourteenth Amendment the constitutional principles applicable to challenges to malapportionment of a State legislature. The United States has filed its principal brief in *Maryland Committee for Fair Representation v. Tawes*, No. 29, because that case presents a greater variety of issues. There, we presented a compendious analysis of the substantive issues in all four cases showing their relation to each other. Substantively, the instant case raises the specific problem of the validity of discrim-

ination in *per capita* representation against the citizens of three areas without any rational justification whatever. Procedurally, the instant case raises questions concerning the relationship between federal and State forums in the adjudication of such constitutional issues.

Individually and collectively, these cases present issues of great importance to millions of American citizens seeking full and fair participation in their State governments. This is the primary basis of the government's interest.

#### STATEMENT

The plaintiffs—four citizens of the United States and of the Commonwealth of Virginia, who are residents and qualified voters of Arlington and Fairfax Counties—filed a complaint on April 9, 1962, in the United States District Court for the Eastern District of Virginia, in their own behalf and on behalf of all voters in Virginia similarly situated, challenging the apportionment of the Virginia legislature. (R. 1-31). The defendants, who were sued in their representative capacities as officials charged with duties in connection with State elections, include the Governor and Attorney General of Virginia; three members of the Virginia Board of Elections; the three members of the Electoral Boards of Fairfax and Arlington Counties, as representatives of all members of city and county electoral boards of Virginia; and the Clerks of the Circuit Courts of Arlington and Fairfax Counties, as representatives of all of the county and city clerks of Virginia (R. 1, 3-4). The plaintiffs claimed rights under the Civil Rights Act, 42 U.S.C. 1983, 1988, and asserted jurisdiction under 28 U.S.C. 1343(3) (R. 2).

The complaint alleged that the present statute apportioning the General Assembly, as amended in 1962, results in "invidious discrimination" since voters in Arlington and Fairfax Counties are given substantially less representation than voters residing elsewhere in the State (R. 6-7). The plaintiffs asserted that the discrimination violates the Fourteenth Amendment as well as the Virginia Constitution. They contended that the requirements of the Fourteenth Amendment and the Virginia Constitution could be met only by a re-distribution of legislative districts among the counties and cities of the State "substantially in proportion to their respective populations" (R. 7-8).

The complaint sought the convening of a three-judge district court. As relief, plaintiffs asked: (1) a declaratory judgment that the statutory scheme of reapportionment, prior as well as subsequent to the 1962 amendments, contravenes the equal protection clause of the Fourteenth Amendment and is, therefore, unconstitutional and void; (2) a prohibitory injunction restraining the defendants from performing their official duties with respect to the election of members of the General Assembly pursuant to the present statute; and (3) a mandatory injunction requiring the defendants to conduct the next primaries and general election for legislators on an at-large basis throughout Virginia (R. 8-9).

1. *The Pre-hearing Proceedings in the District Court.* On April 17, 1962, the Chief Judge of the Court of Appeals for the Fourth Circuit convened a three-judge district court. Four citizens of the United States and Virginia, who are residents and

qualified voters of the City of Norfolk, moved on May 25, 1962, to intervene as intervenor-plaintiffs against the original defendants and against four additional defendants, namely, the Clerk of the Corporation Court for the City of Norfolk and the three members of the Electoral Board of Norfolk (R. 32-43). The application set out the substance of the allegations and grounds contained in the complaint and sought the same relief from the court which the plaintiffs were seeking (R. 36-43). The application was granted (see R. 58). On June 20, 1962, the plaintiffs and intervenor-plaintiffs sought and obtained leave to amend the complaint by adding an additional prayer for relief that, unless the General Assembly "promptly and fairly" reapportioned the legislative districts, the court should reapportion the districts so as to accord the parties and others similarly situated "fair and proportionate" representation in the legislature (R. 55).<sup>1</sup>

2. *The Evidence Before the District Court.* The Virginia Constitution provides for a Senate of not more than 40 nor less than 33 members, and for a House of Delegates of not more than 100 nor less than 90 members. Art. IV, Sec. 41, 42 (see Appendix A., p. 51). At all relevant times, State statutes have fixed the number of senators at 40 and of delegates at 100. The constitution also specifies that a reapportionment must be made at least once every ten years (Art. IV, Sec. 43). The constitution provides

<sup>1</sup> The plaintiffs introduced into evidence two alternate plans for reapportioning the House of Delegates (R. 105-114, 119-131) and three alternate plans for the redistricting of the Senate (R. 133-158).

no express standards, however, for the apportionment of representatives and it also leaves the establishment of the districts to legislation.

The core of the evidence before the district court is the basic figures showing the population of the several districts from which senators and delegates are chosen and the number of senators and delegates assigned to each. The most convenient tabulation appears at R. 11-24. From that data other statistical comparison were derived. Since the 1962 apportionment was enacted only two days before the complaint was filed and made only a small change in Virginia Code 24-12, 14, which had been last amended in 1958, the evidence covers both the present and last previous apportionments.

Although the conclusions to be derived from the data are matters of argument, the basic figures make it abundantly clear that the people of Arlington and Fairfax Counties and the City of Norfolk suffer from gross inequalities in *per capita* representation in both houses of the Virginia legislature. Since there are 40 senators and Virginia had a population of 3,966,949, according to the 1960 census, the ideal ratio would be one senator for 99,174 people. Arlington County has only one senator for 163,401 people—only 61 percent of its fair representation. Its voters are the most underrepresented in the State. The City of Norfolk has only 65 percent of its fair share—two senators for a population of 305,872—making it the second most underrepresented senatorial district. Fairfax, with two senators for 285,194 people, is the third worst represented area with only 70 percent of a fair apportionment.

The inequality is also apparent from the following table showing the Arlington, Fairfax and Norfolk districts in comparison with the most overrepresented districts as well as other typical areas (R. 18-20):

Senatorial district	Total population (1960)	Number of Senators	Population per Senator	Ratio to most under-represented district
Arlington	163,401	1	163,401	1.00
City of Norfolk	303,872	2	152,936	1.00
Fairfax Co.	285,194	2	142,597	1.14
City of Fairfax				
Falls Church				
City of Richmond	219,958	2	109,979	1.58
City of Alexandria	91,023	1	91,023	1.79
Henry				
Patrick				
Pittsylvania	179,288	2	89,644	1.82
City of Danville				
City of Martinsville				
Bland				
Giles				
Pulaski	72,434	1	72,434	2.25
Wythe				
Culpepper				
Fauquier	63,703	1	63,703	2.56
Loudoun				
Brunswick				
Lunenburg	61,730	1	61,730	2.64
Mecklenburg				
State total	3,966,949	40	99,174	1.63

Thus, the ratio between the most overrepresented and the most underrepresented districts is more than  $2\frac{1}{2}$  to 1. Twelve districts have over twice the representation of Arlington County; ten have over twice the representation of Norfolk; and six have over twice the representation of Fairfax.<sup>1a</sup>

The same discrimination against the people of Arlington and Fairfax Counties and the City of Nor-

<sup>1a</sup> In making such calculations, we have considered overlapping districts as one large district. For example, under the apportionment before 1962, Amhurst County (population 22,953) and the City of Lynchburg (population 54,790) together had a delegate, Lynchburg alone had a delegate, and Nelson (population 12,752) and Amhurst Counties had a delegate. We have considered all three as composing one district with a population of 90,595 and three delegates.

folk is apparent in the figures relating to the House of Delegates. Fairfax, the third most underrepresented district in the Senate, is the most underrepresented in the House of Delegates, having only 42 percent of the ideal representation. Arlington, the most underrepresented district in the Senate, is the fifth most underrepresented district in the House, with only 73 percent of its fair share. The City of Norfolk is the sixth most underrepresented district in the House of Delegates, with 78 percent of its fair representation.

The discrimination in the House of Delegates is also apparent from the following table comparing Arlington and Fairfax Counties and the City of Norfolk with the most overrepresented districts and other typical districts (R. 21-24):

House district	Total population (1960)	Number of delegates	Population per delegate	Ratio to most underrepresented district
Fairfax County.....				
City of Fairfax.....	203, 194	3	67, 731	1.00
City of Falls Church.....				
Chesterfield.....	80, 784	1	80, 784	1.17
City of Colonial Heights.....				
Arlington.....	163, 401	3	54, 467	1.74
City of Norfolk.....	308, 872	6	51, 479	1.86
City of Newport News.....	113, 063	3	37, 687	2.80
Lee.....				
Wise.....	74, 418	2	37, 209	2.33
City of Norton.....				
City of Petersburg.....	58, 923	2	29, 461	3.22
Dinwiddie.....	58, 296	2	29, 148	3.36
Pittsylvania.....	52, 401	2	26, 200	3.62
Rockingham.....				
City of Harrisonburg.....	34, 540	1	34, 540	3.87
Loudoun.....	33, 301	1	33, 301	4.09
Bland.....				
Glenn.....	22, 644	1	22, 644	4.19
Grayson.....				
City of Galax.....	21, 975	1	21, 975	4.32
Wythe.....	21, 835	1	21, 835	4.35
Shenandoah.....				
State total.....	3, 808, 949	100	38, 089	2.40

Excluding Arlington, Norfolk, and several pertinent overlapping districts, (see note 1a, p. 7), every district except six has more than twice the representation of the people of Fairfax. Twenty-seven districts have more than three times the representation of the people of Fairfax. The ratio between Fairfax and the four most overrepresented districts is more than 4 to 1. Twelve districts had twice the representation of Arlington, and six, twice that of Norfolk.

The evidence also showed that measured simply by the percentage of the population required to elect a majority in each house of the legislature, Virginia ranks well up on the list of well-apportioned States. It requires just under 40 percent of the population to elect majorities in both the Senate and House of Delegates.

3. *The Decision and Decree of the District Court.* On November 28, 1962, the district court, one judge dissenting, sustained the plaintiffs' claim and entered an interlocutory order (R. 57-80). In an opinion by Judge Bryan, concurred in by Judge Lewis, the court held that the complaint alleged a claim upon which relief could be granted; that the complaint pleaded a class action and an actual controversy within the Declaratory Judgment Act; and that the action was not barred by the 11th Amendment as one by private citizens against a State (R. 57-59).<sup>2</sup> The court refused to stay the case on the ground that the plaintiffs should first procure the views of the State courts on the validity of the apportionment, holding that since

<sup>2</sup> The court sustained motions to dismiss the suit as to the Governor and Attorney General, holding that those officials had no "special relation" to the elections in question (R. 59).

neither the 1962 legislation nor the State constitution was ambiguous, no question of State law requiring abstention was presented.

In applying the equal protection clause, the court ruled, although population is the "predominant" consideration, other factors including "[c]ompactness and contiguity of the territory, community of interests of the people, observance of natural lines, and conformity to historical division \* \* \* are all to be noticed in assaying the justness of the apportionment" (R. 65). While exactitude in population is not constitutionally required, the court said, "there must be a fair approach to equality unless it be shown that other acceptable factors may make up for the differences in the numbers of people" (R. 66). In view of the gross inequalities in representation in Virginia (see pp. 6-9 above), the court put the burden of explanation upon the defendants but found that they failed to meet it; consequently, the court concluded that the discrimination against Norfolk City and Arlington and Fairfax Counties was invidious and violates the equal protection clause of the Fourteenth Amendment (R. 67).

As for relief, the court said that, while it would have preferred for the General Assembly to correct the unconstitutionality of the 1962 legislation, it would not defer the case until the next regular session of the General Assembly in January 1964, because the delegates to be elected in 1963 would hold office until 1966 and the senators to be elected in 1963, until 1968 (R. 67-68), which would cause "unreasonable" delay in correcting the injustices in the House and Senate (R. 68).

The interlocutory order (1) declared that the 1962 apportionment violated the equal protection clause of the Fourteenth Amendment and accordingly was void and of no effect; (2) restrained and enjoined the defendants from proceeding under the 1962 legislation, but stayed the operation of the injunction until January 31, 1963, so that either the General Assembly could act or an appeal could be taken to this Court; (3) provided that, if neither of these steps were taken, the plaintiffs might apply to the court for further relief; and (4) retained jurisdiction over the cause for the entry of such orders as may be required (R. 80).

Judge Hoffman dissented both on the merits of plaintiffs' claim and on the question of relief and procedure (R. 68-79). On the merits, he said that he was not prepared to say that the discrimination under the 1962 legislation violated the Fourteenth Amendment "in the absence of further guidance" from this Court or the Virginia Court of Appeals (R. 69). He said that the majority decision "place[d] too much emphasis upon the weighted vote of one county, city, or district as contrasted with the weighted vote in another county, city or district" (R. 69). On the question of relief and procedure, Judge Hoffman favored application of the doctrine of abstention, at least until the plaintiffs should have exhausted their remedies in the State courts (R. 70, 74-78).

The defendants noted an appeal on December 10, 1962, to this Court (R. 81-83). The Chief Justice granted a stay of the injunction pending disposition of the case by this Court.

## ARGUMENT

## INTRODUCTION AND SUMMARY

The instant case raises a threshold question not presented in the companion cases. The district court refused defendants' request that it abstain from deciding the basic issues under the federal Constitution so that they could be litigated in the State courts, and that ruling is questioned on appeal.

We submit that ruling was correct. The federal courts have power to determine suits challenging the constitutionality of a State's legislative apportionment. *Baker v. Carr*, 369 U.S. 186. A federal action "over which the court has jurisdiction is not to be dismissed merely because an alternative remedy may be available under State law in the State courts. *E.g., Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 27. In this case there are no State issues to be resolved before reaching the federal question, nor is the constitutional right asserted by the plaintiffs "entangled in a skein of state law that must be untangled before the federal case can proceed." *McNeese v. Board of Education*, 373 U.S. 668, 674. The Virginia statute is precise on its face. Plaintiffs' claim is predicated upon the Fourteenth Amendment. Therefore, the district court not only had discretion but the duty to decide the case.

Our basic analysis of the constitutional standards to be applied in adjudicating challenges to the constitutionality under the Fourteenth Amendment of an apportionment of seats in a State legislature is set forth in the Brief for the United States in *Maryland Committee for Fair Representation v. Tawes*, No.

29, this Term.<sup>3</sup> Here, we predicate that the Fourteenth Amendment imposes substantive limitations upon State legislative apportionment, as urged in that brief (pp. 26-29).

We show below that the apportionment of the Virginia legislature violates the second proposition advanced in our Maryland brief (pp. 34-39)—that the equal protection clause condemns gross inequalities in *per capita* representation that have no rhyme or reason. We submit that the people of Fairfax and Arlington Counties and of the City of Norfolk have been capriciously denied anything approaching equal representation in either house of the Virginia legislature. Since these areas contain a substantial part of the population, the discrimination cannot be brushed aside as the kind of trifling inequality that sometimes emerges in the operation of an essentially fair system. The only justifications suggested, in fact, fail to explain the invidious discrimination. Even if appellants' figures concerning military personnel and their dependents were acceptable, they would not support the relatively inadequate representation accorded to Arlington and Fairfax Counties. Nor can the discrimination be explained as an attempt to balance urban and rural power. Other urban areas, such as the City of Richmond, are given appropriate representation.

<sup>3</sup> The analysis, as stated in our Maryland brief, proceeds on the assumption that the Fourteenth Amendment permits reasonable deviations from equal *per capita* representation in at least one house of the legislature. The assumption is made *arguendo*, reserving further judgment, because the issue does not have to be decided in the present cases.

THE DISTRICT COURT CORRECTLY PROCEEDED TO AN ADJUDICATION OF PLAINTIFFS' CONSTITUTIONAL CLAIMS

The district court had jurisdiction of the subject matter of the present action. The plaintiffs, who as individual voters were the victims of the discrimination against the people of Arlington and Fairfax Counties and of the City of Norfolk, had standing to bring the action. The federal question raised by the complaint is justiciable. All three points were settled beyond dispute in *Baker v. Carr*, 369 U.S. 186. Appellants' argument is that the federal court should have dismissed the complaint because the issues had not first been litigated in the State courts, and in this connection appellants point to the suit entitled *Tyler v. Davis* in a State court (see Appellants' Brief, pp. 26-27), which was instituted after the decision below, raising the same questions. We submit that there was no occasion for the district court to postpone adjudication and that, in any event, it would have been error to dismiss the complaint.

A. THE DISTRICT COURT PROPERLY REFUSED TO POSTPONE AN ADJUDICATION PENDING A STATE DETERMINATION OF THE ISSUES

Where a federal court has jurisdiction of an action arising under the Constitution of the United States, it is the court's duty to proceed promptly to a final adjudication without deferring to State courts unless some recognized ground of abstention appears. Only two grounds have any possible relevance in the present case.

1. Where the meaning of a State statute or other State action is uncertain, and therefore its constitutionality cannot be determined until the State has given its action definitive meaning, the federal proceeding may be suspended for a reasonable period pending clarification of the question of State law in a State court. The reason for the rule is that the federal courts will not anticipate a constitutional controversy by adjudicating the validity of State action upon a hypothetical interpretation. *E.g.*, *Government and Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364, 366; *Chicago v. Fieldcrest Dairies, Inc.*, 316 U.S. 168, 171-172; *Spector Motor Service, Inc., v. McLaughlin*, 323 U.S. 101, 104-105; *American Federation of Labor v. Watson*, 327 U.S. 582, 596; *Albertson v. Millard*, 345 U.S. 242, 244; *Harrison v. National Association for the Advancement of Colored People*, 360 U.S. 167.

This ground of abstention is obviously inapplicable to the present case, even if *Harrison v. National Association for the Advancement of Colored People*, *supra*, be thought to make the doctrine applicable to cases under the Civil Rights Act involving an antecedent question of State law. Plaintiffs' claims under the Fourteenth Amendment require no preliminary interpretation of the State legislation or of the significance of executive action. As both the majority and dissenting judges in the court below agreed (R. 59, 76), the Virginia apportionment statute is clear on its face. It defines exactly each legislative district. It assigns specific numbers of representatives to each

district in the Senate and House of Delegates. There is no room for interpretation. Consequently, there is no justification for abstention. *Toombs v. Fortson*, 205 F. Supp. 248, 253 (N.D. Ga.); *Moss v. Burkhardt*, U.S.D.C., W.D. Okla., decided July 17, 1963; *Dyer v. Kazuhisa Abe*, 138 F. Supp. 220, 233 (D. Hawaii).<sup>\*</sup>

2. The Court has also held that where the State action challenged in a federal court may be illegal under the State's own law, either statutory or constitutional, then the federal court should suspend action until proceedings in the State courts reveal whether there is need to decide the federal constitutional question. The rule is based partly upon the principle that the federal courts should not adjudicate constitutional questions unless their resolution is unavoidable, and partly upon the desirability of avoiding unnecessary conflict between the federal courts and State governments. *Government and Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364, 366; *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 498, 500-501; *Chicago v. Fieldcrest Dairies, Inc.*, 316 U.S. 168, 171-172; *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 104-105. The doctrine is inapplicable to the present case, however, first, because the action is one under the Civil Rights Act and, second, because

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<sup>\*</sup> Numerous other federal courts have considered the constitutionality of State apportionments without finding even the necessity of alluding to this question. See the federal cases cited in the government's brief in *Maryland Committee for Fair Representation v. Tawes*, No. 29, this Term, pp. 26-27. Only one court has held to the contrary. *Lein v. Sathre*, 201 F. Supp. 535, 536 (D.N.D.).

there is no serious doubt about the validity of Virginia's apportionment under the Virginia Constitution.

It would defeat the basic purpose of the Civil Rights Act to hold that a federal court must temporarily deny a plaintiff his civil rights under the federal Constitution because he may also have a plausible claim that the defendant's action is violating State law. The very purpose of the legislation is to protect the basic constitutional rights of American citizens against State infringement. Where the challenged State action is ambiguous, it may be reasonable to require the plaintiff initially to ascertain the precise meaning of the State action so as to show that his constitutional rights are actually being violated, and to spare the court the danger of making an unnecessary ruling upon a false hypothesis. Cf. *Harrison v. National Association for the Advancement of Colored People*, 360 U.S. 167. But where the nature of the alleged wrong is clearly established, it is no answer to the plaintiff to say that perhaps he has a different remedy in another forum. This Court stated in *Monroe v. Pape*, 365 U.S. 167, 183, after a lengthy analysis of the legislative history of the Civil Rights Act—

It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.

A requirement of abstention, whenever State action might violate State law would produce long delays<sup>6</sup> and add greatly to the cost of vindicating federal constitutional rights. Litigants would be required to proceed not only in the district courts and then to this Court by direct appeal, but to the district court, to the State trial court and one or more State appeal courts, and then either to this Court directly<sup>7</sup> or to the federal district court and then to this Court. The result is likely to be the defeat of important constitutional rights in voting, racial segregation, and numerous other fields for a considerable period of time or, in practice, often forever.<sup>8</sup> The only alterna-

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<sup>6</sup> For example, this Court decided that the district court should have abstained in *Harrison v. National Association for the Advancement of Colored People*, *supra*, in June 1959. A suit was then brought in the State courts, which upheld the constitutionality of the statutes. This Court ultimately reversed and held that the statute violated the Fourteenth Amendment in *National Association for the Advancement of Colored People v. Button*, 371 U.S. 415, in January 1963, nearly four years after the determination to abstain was first made.

<sup>7</sup> This Court has reviewed cases on direct appeal from the highest State court, after a federal district court has abstained merely to allow the State courts to decide State issues while retaining jurisdiction. *National Association for the Advancement of Colored People v. Button*, *supra*; *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45. As a result, the jurisdiction conferred by the Civil Rights Acts on the federal district courts to decide federal constitutional questions in the first instance may be entirely defeated.

<sup>8</sup> "The King of Brobdingnag gave it for his opinion that, 'whoever could make two ears of corn, or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country than the whole race of politicians put together.' In matters of justice, however, the benefactor is he who makes

tive would be for voters to bring apportionment issues in the State courts—a course which would defeat the purpose of the Civil Rights Acts to provide a federal forum for the assertion of constitutional rights.

The recent decision in *McNeese v. Board of Education*, 373 U.S. 668, confirms the view that abstention is not required in cases brought under the Civil Rights Act where the sole State issue is the constitutionality of the State statute under State law. This Court refused to order a federal district court to abstain in a case brought under the Civil Rights Act on the ground that segregation in an Illinois public school might violate State law, saying that it would defeat the purposes of the Act to hold that the assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a State court. *Id.* at 672. Summarizing its view of the applicable law, the Court stated (*id.* at 674):

The right alleged is as plainly federal in origin and nature as those vindicated in *Brown v. Board of Education*, 347 U.S. 483. Nor is the federal right in any way entangled in a skein of state law that must be untangled before the federal case can proceed. For petitioners assert that respondents have been and are depriving them of rights protected by the Fourteenth Amendment. It is immaterial whether respondents' conduct is legal or illegal as a matter of state law. *Monroe v. Pape* \* \* \*. Such claims are entitled to be adjudicated in the federal courts.

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one lawsuit grow where two grew before." Chafee, *Bills of Peace with Multiple Parties*, 45 Harv. L. Rev. 1297.

Earlier, in *Lane v. Wilson*, 307 U.S. 268, 274, the Court likewise said in a case under the Civil Rights Act that "resort to a federal court may be had without first exhausting the judicial remedies of state courts."

Numerous lower federal courts have also held that persons claiming rights under the Civil Rights Act need not proceed first in the State courts to determine whether the State conduct violates the State's own law. *Browder v. Gale*, 142 F. Supp. 707, 713 (M.D. Ala.), affirmed, 352 U.S. 903, involved statutes and ordinances requiring segregation of buses in Montgomery, Alabama. The district court refused to abstain to allow a State court to determine either the construction or validity of the statutes and ordinances involved because the doctrine of abstention "has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts." In *Dyer v. Kazukisa Abe*, 138 F. Supp. 220, 233 (D. Hawaii), the district court refused to abstain in a case challenging the apportionment of the Hawaii legislature even though it stated that the apportionment plainly violated the Organic Act. While the court believed that abstention was proper where interpretation of local law could avoid a constitutional question, it said that otherwise a plaintiff may litigate in a federal court even though a local court could grant effective relief. *Ibid.* In *Romero v. Weakley*, 226 F. 2d 399, 400-402, the Ninth Circuit noted that the California constitution had the same

provisions as the federal prohibiting racial segregation of public schools. The court nonetheless said that the plaintiffs were entitled to an adjudication under the federal Constitution since the "obvious purpose of the civil rights legislation [was] to give the litigant his choice of a federal forum rather than of the state." *Id.* at 401. Accord, *e.g.*, *Westminster School Dist. v. Mendez*, 161 F. 2d 774, 781 (C.A. 9); *Mitchell v. Wright*, 154 F. 2d 924, 926 (C.A. 5); *Stapleton v. Mitchell*, 60 F. Supp. 51, 55 (D. Kansas), appeal dismissed *sub nom. McElroy v. Mitchell*, 326 U.S. 690; *Wilson v. Beebe*, 99 F. Supp. 418, 420-421 (D. Del.).

The decision below would be correct even if the abstention doctrine applied in an apportionment case brought under the Civil Rights Act because, in the present case, there is no substantial claim that the Virginia apportionment deprives the plaintiffs of rights secured by Virginia law. At one point the complaint does allege that the apportionment violates both the Fourteenth Amendment and the Virginia Constitution (R. 7-8), but the reference follows two allegations confined to violation of the Fourteenth Amendment (R. 4, 6), and the complaint cites no provision of the Virginia Constitution that is said to be violated. The prayer for relief asks only that the district court declare the apportionment invalid under the Fourteenth Amendment (R. 8-9). The district court construed the complaint not to assert rights under the State constitution, for it described the issue as one arising solely under the Fourteenth Amendment (R. 57-58).

There is no apparent ground on which the apportionment could be held invalid under the Virginia Constitution. Virginia's constitution establishes no standards for apportionment of the legislature. The only provision fixes the maximum and minimum number of members in each house and states when they should be elected. Article IV, Sec. 40-41, Appendix A, p. 51. While appellants rely (Br. 24) on Article IV, Sec. 43 (Appendix A, p. 51), it merely provides for reapportioning every ten years. It is in marked contrast to the analogue provision in the Constitution of 1864 (Section 6) which required the legislature to reapportion every ten years on the basis of an enumeration of population. The Virginia Constitution contains no provision guaranteeing equal protection of the law. The two due process clauses are plainly inapplicable.\*

\* One clause, under the heading of "criminal prosecutions generally," provides that no man shall "be deprived of life or liberty, except by the law of the land \* \* \*." Art. I, Sec. 8. Apportionment of a legislature obviously has nothing to do with a criminal prosecution. The other provision states that "no person shall be deprived of his property without due process of law \* \* \*." Art. I, Sec. 11. Since the right to fair representation involves liberty not property, this provision is likewise inapplicable.

Even if Virginia did have equal protection or a due process clause applying to liberty, we still believe abstention would not be proper. Many States have such provisions without applying them to require fair apportionment. Indeed, we know of no cases where they have been applied. Consequently, we do not believe that even when such clauses exist, there is a substantial enough likelihood that the State issue will be controlling for a federal court to stay its determination of the federal constitutional issues (this is on the assumption, which we reject above, pp. 16-18, that abstention is proper where there is a real question as to the validity of the State statutes under the State constitution):

*Brown v. Saunders*, 159 Va. 28, 166 S.E. 105, holds nothing to the contrary. The Supreme Court of Virginia held that the State's congressional districting violated Art. IV, Sec. 55, of the Virginia Constitution, which requires congressional districts to have "as nearly as practicable, an equal number of inhabitants." The specific requirement applicable to congressional districting obviously has no bearing on apportionment of the legislature.

Contrary to appellants' argument (Br. 26-28), the pendency of litigation in the State courts challenging the existing apportionment under both federal and State constitutions is irrelevant. The present case was brought on April 9, 1962 (R. 2), and decided by the district court on November 28, 1962 (R. 57, 79). *Tyler v. Davis* was not instituted in the State court until March 26, 1963, almost four months after the district court had rendered its decision; in the trial court the action was dismissed on the merits. Obviously, the district court could not have taken into account the State litigation even if it were relevant. Nor should pendency of this action, which throws no light upon the present issues, affect this Court's consideration of the federal controversy.<sup>9</sup>

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<sup>9</sup> There is equally no basis for abstention in the other apportionment cases now being heard on the merits by this Court—even if this issue had been raised in those cases. *Maryland Committee for Fair Representation v. Taves*, No. 29, this Term, was decided by a State court and therefore cannot possibly present the issue of abstention. In *WMCA, Inc. v. Simon*, No. 20, this Term, the New York apportionment faithfully follows the State constitution; indeed, it is the state constitutional provisions which are under attack. While the pre-

3. Although appellant does not raise the point, it may be suggested that since a court-ordered reapportionment (if the legislature refused to act following invalidation of the existing apportionment) would penetrate deeply into the political processes of the State and might require familiarity with State customs as well as State law, a federal court should not rule upon a challenge to an existing apportionment under the Fourteenth Amendment if the question could be litigated in a State court, which, presumably, would be better equipped to formulate a judicial remedy. In our view, abstention for this purpose would not be appropriate for three reasons:

existing apportionment in *Reynolds v. Sims*, Nos. 23, 27, 41, this Term, violated the Alabama Constitution, the highest State court has refused to exercise jurisdiction in cases challenging the apportionment of the State legislature. *Waid v. Pool*, 255 Ala. 441, 442; 51 So. 2d 869; *Ex parte Rice*, 143 So. 2d 848 (Ala. Sup. Ct.);

As to the congressional districting in Georgia involved in *Wesberry v. Sanders*, No. 22, this Term, the Georgia Constitution has no provisions giving standards for congressional districts. While it has equal protection and due process clauses (Art. I, c. 2-1, Secs. 102, 103), there is no indication that these general provisions would invalidate the present districts making the decision of the federal constitutional issue unnecessary (see p. 22, note above). In any event, as we emphasize in our brief in that case (pp. 42-44), that case involves at the present time only whether the complaint should be dismissed for want of jurisdiction or of equity. Since, as we have seen above (pp. 15-16), there is plainly no basis for dismissal in order to allow the State courts to decide the State issues, the question of abstention is not now at issue. On remand, the district court may properly decide whether to stay proceedings for any valid reason, such as to allow the State legislature to act. See the cases cited in our brief in *Wesberry v. Sanders*, pp. 37-38.

First, the abstention doctrine has never been applied on the question of remedies. The doctrine is derived from the precepts of constitutional law preventing unnecessary constitutional decisions and advisory opinions. Neither line of reasoning would support abstention to allow a State court to frame a remedy for violation of a federal constitutional right.

Second, abstention prior to an adjudication of the merits would be inappropriate even if it might be within the court's discretion once the task of formulating a remedy was reached. The court below did not undertake to reapportion the Virginia legislature. It merely enjoined further action pursuant to the State statute and provided ample opportunity for the State legislature to adopt a new apportionment honoring plaintiffs' constitutional rights. In the event that the legislature fails to act—an event there is no apparent reason to anticipate—it will be time enough to consider what further relief should be awarded and whether the plaintiffs should be required to ascertain whether it can be obtained promptly in a State court.

Third, in the present case even a judicial reapportionment would not involve consideration of State law. The Virginia Constitution contains no standards for the apportionment of the legislature except to establish the maximum and minimum size of each house. There are no judicial decisions or statutes bearing upon the question beyond those which the district court found to be unconstitutional. Thus, in this case, even the formulation of a judicial reapportionment would not be entangled with questions of State law.

B. EVEN WHEN ABSTENTION IS APPROPRIATE, A DISTRICT COURT SHOULD RETAIN JURISDICTION TO ADJUDICATE THE CLAIMS OF FEDERAL CONSTITUTIONAL RIGHT

The doctrine of abstention, where applicable, provides for the determination of State and federal questions in orderly sequence. It is not a defense defeating the plaintiff's constitutional rights. Consequently, when a federal court stays its hand to await a State determination, the proper course is to retain jurisdiction pending the proceeding in the State courts. Thus, in *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 30-31, the Court, while holding that State issues should be decided by the State courts, ordered the federal district court to retain jurisdiction. Accord, e.g., *Harrison v. National Association for the Advancement of Colored People*, 360 U.S. 167, 179; *Government and Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364, 366-367; *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 501-502; *Chicago v. Fieldcrest Dairies, Inc.*, 316 U.S. 168, 173; *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 106; *American Federation of Labor v. Watson*, 327 U.S. 582, 599; *Albertson v. Millard*, 345 U.S. 242, 245. The Court in the *Louisiana Power* case specifically stated that "the mere difficulty of state law does not justify a federal court's relinquishment of jurisdiction in favor of state court action" *Id.* at 27.

The occasional cases cited by appellants in which the Court has ordered the dismissal of actions brought in federal courts because of the existence of controlling State issues are readily distinguishable. In

*Pennsylvania v. Williams*, 294 U.S. 176, 184, the Court emphasized, in a case involving liquidation of a building and loan association, that it was not a State court but a State officer that was asserting jurisdiction, and that this officer was charged by State law with supervising and, in case of insolvents, liquidating the State's own associations. Furthermore, the case did not involve constitutional issues and the Court emphasized that purely private rights were involved. *Id.* at 185. *Hawks v. Hamill*, 288 U.S. 52, was a diversity case involving no claim of federal right and which depended entirely on the purely local question whether a State-granted franchise was valid under the State constitution. The Court in *Matthews v. Rodgers*, 284 U.S. 521, relied on the well-established rule that the federal courts will not enjoin State taxes where there is an adequate State remedy by suing for return of taxes paid. This is, as the Court emphasized (*id.* at 525), a particular application of the general equitable principle that suits in equity do not lie when there is an adequate legal remedy. In *Stainback v. Ho Hock Ke Lok Po*, 336 U.S. 368, 383, this Court made clear that the Hawaii statute was susceptible to varying interpretations by the Hawaii courts. While the Court ordered, without discussion, the complaint to be dismissed rather than having the district court retain jurisdiction until the scope of the statute was reviewed, the result is inconsistent with the cases cited in the text above (pp. 15-16) and numerous other decisions of this Court. The Court in *Burford v. Sun Oil Co.*, 319 U.S. 315, 331, 333-334, dismissed an action

challenging Texas' regulation of oil wells within the State since such regulation involves almost exclusively State issues which are of local and not general concern, and review by the federal courts will produce conflicting determinations where uniform regulation is necessary.

None of those cases is apposite here. There is no substantial remedy at law for the malapportionment of State legislatures. The State statutes here need no interpretation. Legislative apportionment is not of limited, local concern. Most important, the case raises basic, constitutional rights under the Fourteenth Amendment concerning the right of American citizens to equal participation in their own State government. Thus, even if the federal courts should sometimes stay proceedings in apportionment cases for the determination of State issues, dismissal is plainly improper. Once the State issues have been determined, it is the duty of the federal courts to protect constitutional rights and therefore to decide the constitutional issues. The responsibility continues whether or not State issues are also present.

The only case decided by this Court even suggesting that controversies involving State legislative apportionment should be dismissed for want of equity is *Colegrove v. Green*, 328 U.S. 549, which involved the analogous issue of Congressional districting. There, Mr. Justice Rutledge, who cast the deciding vote, said that the cases should be dismissed for want of equity. However, this view was not based on the need for determining whether the statute was ambiguous or might violate the State constitution. Rather, Mr.

Justice Rutledge concluded that the Court should refuse to exercise its equitable discretion because "[t]he shortness of the time remaining [before the next election] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek." *Id.* at 565. In a subsequent case involving the Georgia county unit system, Mr. Justice Rutledge explained his position in *Colegrove* as based on the "particular circumstances" of that case. *Cook v. Fortson*, 329 U.S. 675, 678.

In the present case, there was no difficulty arising from the imminence of an election. Nor was there any other special reason why the district court should not have exercised its equitable discretion to prevent the violation of federal constitutional rights.

## II

VIRGINIA'S LEGISLATIVE APPORTIONMENT VIOLATES THE FOURTEENTH AMENDMENT BY GROSSLY DISCRIMINATING AGAINST THE PEOPLE OF ARLINGTON AND FAIRFAX COUNTIES AND THE CITY OF NORFOLK WITHOUT RHYME OR REASON

In our brief in the Maryland case (pp. 24-34), we argued that population is the point of departure for judging the constitutionality under the Fourteenth Amendment of a State's legislative apportionment. Where serious inequalities are found in *per capita* representation, the apportionment violates the equal protection clause unless some rational basis can be found for the differentiation. When no justification is apparent and the State offers none that is adequate, the differ-

ences in the representation of voters in the several areas are arbitrary and capricious and therefore violate the Fourteenth Amendment.

These conclusions merely apply to apportionment principles long settled under the Fourteenth Amendment. As the Court said in *Baker v. Carr*, 369 U.S. 186, 226, "it has been open to the courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action." The lower courts have consistently applied this principle in apportionment cases. See the authorities cited in our Maryland brief, pp. 39 and 50-51.

The Virginia apportionment is invalid<sup>9</sup> under the foregoing rules.

**A. THE VIRGINIA APTORTIONMENT SERIOUSLY DISCRIMINATES AGAINST THE VOTERS IN ARLINGTON AND FAIRFAX<sup>10</sup> COUNTIES AND IN THE CITY OF NORFOLK**

The discrimination against the voters in Arlington, Fairfax and Norfolk is too plain for dispute.<sup>11</sup> Ar-

<sup>10</sup> We use Fairfax County as a short-hand description for the total area of the county including the cities of Fairfax and Falls Church which are actually independent. The county and the two cities constitute a single district in both the Senate and the House of Delegates.

<sup>11</sup> We do not mean to suggest that there is no discrimination against other districts, or that such discrimination does not violate the Fourteenth Amendment. Just as the district court did not consider it necessary to decide whether such discrimination was unconstitutional (see R. 67), we likewise do not discuss the issue. If the discrimination against Norfolk, Fairfax, and Arlington violates the Fourteenth Amendment, the apportionment is unconstitutional and the district court's injunction against further elections under it was proper.

lington, Fairfax and the City of Norfolk are the three most underrepresented districts in the State Senate. The extent of the discrimination is demonstrated both by the evidence that each has only about two-thirds of its proper representation and also by comparison of the *per capita* representation of their voters with that of the three most over-represented districts:

Senatorial district	Population (1900)	Senators	Population per senator	Percent of ideal ratio <sup>1</sup>
Arlington.....	163,401	1	163,401	61
City of Norfolk.....	205,872	2	102,936	66
Fairfax, et al.....	285,194	2	142,597	70
Loudoun, et al.....	63,703	1	63,703	106
Goochland, et al.....	62,523	1 <sup>*</sup>	62,523	109
Brunswick, et al.....	61,730	1	61,730	161

<sup>1</sup> Since Virginia's population is 3,968,949, the average or ideal population per Senator is 99,174.

Thus, the three most overrepresented districts have  $2\frac{1}{2}$  times the per capita representation of Arlington and Norfolk and over twice the representation of Fairfax.

Arlington, Fairfax and Norfolk suffer in comparison with almost all other senate districts. They have the smallest percentages of the average ratio. Of the 36 senate districts, twelve have over twice the *per capita* representation of Arlington; ten have over twice the *per capita* representation of Norfolk; and six over twice that of Fairfax.

The situation in the House of Delegates is even worse. The average population per delegate for the State as a whole is 39,669. The population per delegate in Fairfax, Arlington, and the City of Norfolk, which are the first, fifth, and sixth most underrepre-

sented in the State,<sup>12</sup> are 95,064, 54,467, and 50,978, respectively. Contrast the three most overrepresented districts:

House district	Population (1900)	Delegates	Population per delegate	Percent of ideal ratio
Fairfax, <i>et al.</i> .....	285,194	3	95,064	42
Arlington.....	163,401	3	54,467	73
City of Norfolk.....	305,872	6	50,978	78
Grayson, <i>et al.</i> .....	22,644	1	22,644	175
Wythe.....	21,975	1	21,975	181
Shenandoah.....	21,825	1	21,825	182

Thus, the three most overrepresented districts have over four times the representation of Fairfax and about 2½ times the representation of Arlington and the City of Norfolk. Again, the discrimination is not confined to a few favored districts but runs against the counties in question in comparison with the rest of the State. Twenty-seven districts of the seventy have three times the representation of Fairfax; fifty-five districts have over twice the representation of Fairfax; twelve have twice the representation of Arlington; and six twice that of Norfolk City.<sup>13</sup>

Thus, the discrimination against Fairfax, Arlington, and Norfolk extends to both houses. Fairfax has only 70 percent of its appropriate representation in the Senate and only 42 percent in the House. Arling-

<sup>12</sup> The second, third, and fourth most underrepresented districts are the City of Hampton, Chesterfield, *et al.*, and the City of Portsmouth, which have populations of 89,258, 80,784 and 114,773 (57,386 per delegate), respectively.

<sup>13</sup> The table also shows severe discrimination even among Fairfax, Arlington, and Norfolk City. Fairfax has only 20,000 less people than Norfolk but Norfolk has twice as many delegates. Arlington has slightly over half the population of Fairfax, yet has the same number of delegates.

ton has 61 percent of its appropriate representation in the Senate and 73 percent in the House. Taking the legislature as a whole they are, by a wide margin, the three most underrepresented counties in the State.

Manifestly, the discrimination cannot be brushed aside as sport in an essentially fair plan of representation. The three districts in question contain almost one-fifth of the population of the State."

B. THE GROSS DISCRIMINATION IS BASED UPON NO INTELLIGIBLE  
POLICY

The statutes of Virginia set forth no rational basis for the foregoing inequalities in *per capita* representation. None is advanced in any of the documents or other history underlying the statutory apportionment. Nor is any apparent from Virginia's history

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"Appellants argue (Br. 46-50) that the discrepancies in Virginia between districts are not as great as those in the electoral college. However, as we showed in our brief in the Maryland case (pp. 73-80), the federal government was a compromise between a unified national government and a confederation. Those who favored the former type of government wanted representation based directly on population; supporters of the confederation wanted representation based on the States. Just as the Congress is a compromise of the two views as to the basic nature of the new government (and not as to what kind of apportionment is permissible); so is the electoral college. For a State has the same numbers of electoral votes as it has representatives which are determined by population, and senators, which are given equally to each State. The States, on the other hand, are unitary governments operating directly for the people and therefore only representation and statewide elections based on population are permissible.

In *Gray v. Sanders*, 372 U.S. 368, 378, this Court held that the electoral college was not analogous to the Georgia county unit system for statewide election; certainly, that analogy is far closer than the electoral college, which relates to nationwide elections, is to state legislative apportionment.

generally, except that the same areas suffered similar discrimination under the previous apportionment. The justifications now put forward by appellants are all afterthoughts that cannot be squared with the facts.

1. Appellants' principal contention (Br. 33-37) is that the inequalities in *per capita* representation are to be explained by a State policy of excluding from persons entitled to representation all transient military personnel and their families. The contention fails for two reasons.

First, the policy of Virginia, so far as evidenced by her election laws, actually favors military personnel. They are not included in the categories of persons disabled to vote. 24 Va. Code 18, Appendix A, p. 57. Military personnel and members of their families who have been residents of Virginia for a year, residents of a county, city or town for six months and residents of a precinct for 30 days are entitled to vote. 24 Va. Code 17, Appendix A, pp. 56-57. Although the mere stationing of military personnel in the State does not give them residence (24 Va. Code 19, Appendix A, p. 58), Virginia election officials interpret the provision to mean that residence for military personnel is determined in the same manner as for all other citizens. The Virginia election laws enable persons in the armed forces to vote without registration or payment of poll tax. 24 Va. Code (1962 Supp.) 23.1, Appendix A, pp. 57-58. While the literal language of the statute grants the privilege to those on "active service \* \* \* in time of war," the Virginia State Board of Electors is applying it currently.

In no event could it be lightly assumed that in apportioning representatives the Virginia legislature would discriminate against men and women in their country's armed forces. Virginia's policy, as evidenced by its statutes, looks the other way. Since other non-voters, such as felons and other temporary residents, were not eliminated, it is unreasonable to suppose that a State which favors military personnel in voting, actually reversed itself to eliminate them from consideration in apportioning representatives in the legislature.

Appellants cite no evidence of any such legislative intent. All the proposed apportionment plans which preceded the 1962 apportionment, including the program of the Commission on Redistricting which reported to the governor (R. 159-188), invariably used total population without reference to military personnel or their families.

Second, the exclusion of military personnel from the total population of the various districts will not explain the discrimination against Fairfax, Arlington, and Norfolk. Nor will the exclusion of  $2\frac{1}{2}$  times the number of military personnel, as appellants suggest (Br. 37), in order to account for the entire families of servicemen, explain the discrimination.

The following table will show that there is the same gross discrimination in *per capita* representation in the Senate even if military personnel and their families are excluded from the population.<sup>15</sup>

<sup>15</sup> The number of military personnel in each county and independent city is given in Appendix B below, pp. 59-61. The population of each senatorial and house district after exclusion of military personnel and after exclusion of  $2\frac{1}{2}$  times the number of military personnel is also given in Appendix B. pp. 62-67.

Senatorial district	Population excluding military personnel (1960)	Population minus 2 1/4 times military personnel (1960)	Senators	Population, excluding military personnel, per Senator	Population, minus 2 1/4 times military personnel, per Senator	Percent of ideal ratio based on exclusion of military personnel	Percent of ideal ratio based on 2 1/4 times military personnel
Arlington.....	152,025	134,061	1	132,025	134,061	63	67
City of Norfolk.....	261,491	194,919	2	130,745	97,460	73	100
Fairfax, <i>et al.</i> .....	266,227	242,777	2	134,113	121,366	71	73
Loudoun, <i>et al.</i> .....	63,143	62,303	1	63,143	62,303	132	146
Goochland, <i>et al.</i> .....	62,325	62,028	1	62,325	62,028	154	146
Brunswick, <i>et al.</i> .....	61,730	61,730	1	61,730	61,730	156	147
State total.....	3,833,867	3,684,344	40	95,847	90,856	100	100

<sup>1</sup> Appellants state (Br. 47) that Norfolk City is over-represented in the Senate if military personnel and their families are excluded. This is incorrect. Appellants' view is based on an average population per Senator throughout the State of 90,174. However, if military personnel are excluded, the average population per Senator is 95,847 and if 2 1/4 times the number of military is excluded the average population per Senator is 90,856.

Using total civilian population, the three most over-represented counties have  $2\frac{1}{2}$  times the representation of Arlington and over twice the representation of the City of Norfolk and Fairfax. Of the 36 senate districts, ten have over twice the representation of Arlington, and three over twice the representation of Norfolk and of Fairfax. Using total population, minus  $2\frac{1}{2}$  times the number of military personnel, the three most overrepresented counties still have approximately twice the representation of Arlington and Fairfax. Twenty-two districts have over  $1\frac{1}{2}$  times the representation of Arlington, thirteen have over  $1\frac{1}{2}$  times the representation of Fairfax, and four have over  $1\frac{1}{2}$  that of Norfolk City.<sup>18</sup> The short of the matter is that the only significant change is in the figures for Norfolk County.

The factual inadequacy of appellants' theory is also apparent from the figures for the House of Delegates:

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<sup>18</sup> The figures in this section are based upon the tables in Appendix B, pp. 62-64.

House district	Population excluding military personnel (1960)	Population minus 2½ times military personnel (1960)	Delegates	Population, excluding military personnel, per delegate	Population, minus 2½ times military personnel, per delegate	Percent of ideal ratio based on exclusion of military personnel	Percent of ideal ratio based on exclusion of 2½ times military personnel
Fairfax, et al.	206,277	245,902	3	86,626	80,967	43.8	45
Arlington	122,025	134,961	3	44,307	44,967	70	81
City of Norfolk	281,491	194,920	6	32,483	32,457	68	112
Grayson, et al.	22,640	22,634	1	22,640	22,634	100	101
Wythe	21,971	21,965	1	21,971	21,965	175	168
Shenandoah	21,817	21,805	1	21,817	21,805	176	167
State total	3,533,967	3,034,244	100	36,336	36,342	100	100

Using total civilian population, the two most over-represented districts have over four times the representation of Fairfax, 17 of the 70 districts have over three times the representation, and 40 have over twice the representation. Seven districts have twice the representation of Arlington and 26 over  $1\frac{1}{2}$  times the representation. Fourteen districts have over  $1\frac{1}{2}$  times the representation of Norfolk. Using total population, minus  $2\frac{1}{2}$  times the number of military personnel, the three most overrepresented counties have over  $3\frac{1}{2}$  times the representation of Fairfax<sup>17</sup> and about twice the representation of Arlington. Forty-eight house districts have over twice the representation of Fairfax, and 21 districts have over  $1\frac{1}{2}$  times the representation of Arlington (see App. B, pp. 65-67).

In short, even accepting appellants' figures of military connected personnel, they are wholly inadequate to explain the discrimination against the people of Arlington and Fairfax counties. The compelling inference is that comparisons of total population, less military personnel and their families, were not the basis of the apportionment. Thus, the discrimination against all three districts remains unexplained.<sup>18</sup>

<sup>17</sup> Appellants state (Br. 38) that the ratio of representation in the House of Delegates of the most overrepresented county to Fairfax is 3.53 to 1 after  $2\frac{1}{2}$  times the military personnel are excluded from total population. In fact, the ratio is 3.71 to 1.

<sup>18</sup> Even if the exclusion of military personnel and their families from the total population of Virginia did explain the Virginia apportionment we submit the apportionment would still be unconstitutional. However, this would not be because the apportionment discriminated without rhyme or reason (see

2. Appellants also suggest (Br. 50, 56) that Virginia's apportionment is an attempt to balance urban and rural power in the legislature. The explanation, whatever its legal merit,<sup>19</sup> does not conform to the

our brief in the Maryland case, pp. 34-39), but because the discrimination was invidious (see our brief in the Maryland case, pp. 39-46). We perceive no valid basis on which military personnel and their families may be deprived of representation in a State legislature. A State may limit the right to vote of persons not remaining long in the State through residence requirements and may base its apportionment on eligible voters. However, when military personnel and their families can vote by satisfying the general residence requirements (we doubt whether more restrictive voting requirements may validly be placed on servicemen), it is invidious discrimination to deprive them of representation by not including them when the apportionment is made. This is particularly so when all other categories of voters and even all non-voters are included within the population base used to make the apportionment.

Excluding military personnel and their families in voting on apportionment also discriminates against the overwhelming majority of other persons in counties and cities like Fairfax, Arlington, and Norfolk City with large numbers of military personnel. For the votes of these other people are diluted by the votes of the servicemen and their families, while not giving the area the appropriate amount of representation. As a result, voters in such areas have less voting strength in terms of either voters per legislator or total population per legislator than other areas of the State. We see no rational reason for so diluting the votes of these other persons.

<sup>19</sup> If the Virginia apportionment could be explained on the basis of an attempt to balance urban and rural power, we would argue that the resulting discrimination against urban areas was invidious. For, just as in *WMCA, Inc. v. Simon*, No. 20, this Term (see our brief, pp. 14-33), it was invidious discrimination to give significantly greater representation to less populous political subdivisions, it is likewise invidious to give greater representation to rural, in contrast to urban, areas. And this justification is not made reasonable because urban and rural

facts. Arlington and Fairfax are suburban areas while the City of Norfolk is an urban area. The City of Richmond, another urban area, has two senators for 219,958 people, or one per 109,979, which is 90 percent of its appropriate representation. This is 50 percent more representation than Arlington. In the House of Delegates, Richmond, which together with the suburban County of Henrico composes one district of 337,297 people with eight delegates, has an average of 42,162 people per delegate.<sup>20</sup> This is 94 percent of its ideal representation and well over twice the representation of Fairfax. Norfolk County and the City of South Norfolk, which are suburban areas adjoining the City of Norfolk, have 135 percent of their proper representation in the Senate—which is over twice the representation of Arlington, or of the City of Norfolk, and almost twice the representation of Fairfax. As to the House of Delegates, Norfolk County and South Norfolk have 108 percent of their proper representation which is over twice the representation of Fairfax

power is allegedly balanced. An equally strong argument could be made for balancing Protestant and Catholic representation, Negro and white, business and labor. The very point of democratic government is not to give a group greater representation than its numbers justify.

This is not to say, however, that a State cannot give minimum representation to each political subdivision. We have assumed *arguendo* in these cases that such a method of apportionment is proper since the discrimination against urban voters is only an incidental result. However, we have limited this assumption to apportionments which do not result in gross discrimination. See our brief in the Maryland case, pp. 24-25, 46-50.

<sup>20</sup> Henrico has, in addition, a representative to itself.

and almost  $1\frac{1}{2}$  times the representation of Arlington and the City of Norfolk."<sup>21</sup>

Moreover, the balance which appellants claim results in the legislature between urban and rural areas is based on the inclusion in the urban category of many small cities not considered by the United States Census as metropolitan areas. Department of Commerce, *County and City Data Book, 1962*, p. 665. Many of these small cities are overrepresented in the Virginia legislature. For example, the City of Lynchburg and Campbell County have 113 percent of their proper Senate representation, Augusta, *et al.*, have 118 percent, and Dinwiddie, *et al.*, have 134 percent. Similarly, in the House of Delegates, Charlottesville has 135 percent of its proper representation, Allegany, *et al.*, have 139 percent, Nelson and the City of Petersburg and Dinwiddie County have 135 percent.

3. Appellants contend (Br. 56-58) that the apportionment can be explained by the factors of area and the number of political subdivisions in each district.<sup>22</sup>

<sup>21</sup> Appellants suggest (Br. 56, 58) that population density may explain the Virginia apportionment. This is virtually, however, the same thing as giving more representation to rural than urban areas as population density is much lower in the former than the latter. Moreover, while there are no figures on this issue in the record, it seems unlikely that the City of Richmond is less densely populated than most suburban areas as Arlington or especially Fairfax. Indeed, we doubt that there is any appreciable difference in density between urban areas such as Richmond and Norfolk City and among suburban areas like Arlington, Fairfax, Henrico, Norfolk County, and South Norfolk.

<sup>22</sup> We do not understand how the number of political subdivisions has any relevance and therefore inequalities result-

These factors are likewise inadequate. The senatorial district of Norfolk County and South Norfolk has one governmental unit and an area of 344 square miles (R. 275). The Fairfax senatorial district, on the other hand, has three governmental units and 407 square miles (R. 279). Yet, as we have seen (pp. 41-42), the former district has almost twice the representation of the latter. The City of Richmond has 37 square miles and only one governmental subdivision (R. 280). Yet, it has almost 50 percent more representation in the Senate than Norfolk, which has 50 square miles and one governmental subdivision (R. 275). The senatorial district of Dinwiddie *et al.*, has 823 square miles and 3 political subdivisions (R. 276). The senatorial district of Accomack, *et al.*, has 951 square miles and 3 political subdivisions (R. 275). Yet, the former district has 134 percent of its proper representation and the latter has 75 percent. The senatorial district of King George, *et al.*, has 1564 square miles and 7 governmental subdivisions (R. 279); Brunswick, *et al.*, has 1648 square miles and 3 political subdivisions (R. 276); the City of Hampton has 57 square miles and 1 political subdivision (R. 280);

ing resulting from this factor would constitute invidious discrimination. An apportionment based in whole or part on area would also be invidious since legislators represent people, not land. The only possible relevance of basing an apportionment on area would be to assure that every area of the State had a spokesman for its views in the legislature. Even assuming this would justify some inequality, this objective would be satisfied by giving each area a representative in one house of the legislature; it could not justify Virginia's discrimination in both houses.

and Alexandria has 15 square miles and one political subdivision (R. 280). Yet, King George, *et al.*, has 89 percent of its appropriate representation and Brunswick has 161 percent, Hampton has 111 percent, and Alexandria 109 percent.

In the House of Delegates, Norfolk County and the City of South Norfolk, having 344 square miles and 1 governmental unit, has 107 percent of its proper representation (R. 289). Fairfax, having 407 square miles and 3 governmental subdivisions (R. 286), has 42 percent of its proper representation. Thus, the former district, with substantially less area and  $\frac{1}{3}$  the number of governmental subdivisions, has  $2\frac{1}{2}$  times as much representation. Charlottesville has 6 square miles and 1 governmental subdivision (R. 283). Yet, it has 135 percent of its proper representation. Thus, Charlottesville, with  $\frac{1}{68}$  the area and  $\frac{1}{3}$  the governmental units, has 3 times the representation of Fairfax. Wythe and Shenandoah, the two most overrepresented House districts in the State, have 460 and 507 square miles respectively, and each is a governmental subdivision (R. 290, 291). Yet, they have 181 and 182 percent of their proper representation. In contrast, Russell, *et al.*, has 818 square miles and 2 governmental subdivisions (R. 284), but only 85 percent of its appropriate representation. Charles City County, *et al.*, has 670 square miles, 5 governmental subdivisions (R. 285), and only 79 percent of its proper representation. And Washington, *et al.*, which is the fifth largest in the State in area, having 1,122 square miles and 3 governmental sub-

divisions (R. 291), has only 98 percent of its proper representation.<sup>23</sup>

4. Nor do we know of any other explanation, not suggested by appellants, for the serious discrimination against Arlington, Fairfax, and Norfolk City. First, the discrimination cannot be explained as giving less representation to populous political subdivisions to prevent their control of the State legislature. While the Counties of Arlington and Fairfax and the City of Norfolk are three of the four most populous political subdivisions in the State, the third most populous is the City of Richmond.<sup>24</sup> As we have seen, however, Richmond is only slightly underrepresented. Moreover, the fourth most populous political subdivision, Arlington, is the most underrepresented in the Senate. And the most populous subdivision, the City of Norfolk, is only the second most underrepresented in the Senate and sixth most underrepresented in the House. The second, third, and

<sup>23</sup> The Virginia apportionment cannot be justified by appellants' suggestion (Br. 58-59) that it is an attempt to ensure adequate accessibility of representatives and voters in rural areas by keeping rural districts limited in size. This is merely the factor of area in a different guise. We have seen (pp. 42-44) that districts having a smaller area frequently have greater representation measured by population than larger. The opposite would obviously be true if accessibility of legislators to the voters were an important factor.

<sup>24</sup> We are not suggesting that discrimination against populous subdivisions would be a constitutionally valid justification for disparities in representation. In our brief in *WMCA, Inc. v. Simon*, No. 20, this Term, pp. 14-33, we argue that a classification giving less representation to populous political subdivisions is invidious under the third principle we suggested in the *Maryland* case (see our brief in that case, pp. 39-46) and therefore violates the Fourteenth Amendment.

fourth most underrepresented districts in the House have, in contrast to the 305,872 people in Norfolk, only 89,288, 80,784 and 114,773 (57,386 per delegate) people, respectively. And even if Arlington, Fairfax, and the Cities of Norfolk and Richmond were given their full proportionate representation, they have less than one-fourth the population of the State.

Finally, the apportionment of Virginia cannot be justified on the ground that it is an attempt to balance the power of different areas of the State in the legislature. Arlington and Fairfax, which are seriously underrepresented, are in the north of the State. Loudoun, in contrast, which adjoins Fairfax County has 162 percent of the appropriate representation in the House of Delegates, over twice the representation of Arlington and almost four times that of Fairfax. In the Senate, Loudoun has over  $2\frac{1}{2}$  times the representation of Arlington and twice that of Fairfax. Similarly, as we noted above, Norfolk County and the City of South Norfolk, which adjoin the City of Norfolk in the southeastern part of the State, have over twice the representation of Norfolk City in the Senate and  $1\frac{1}{2}$  times in the House. Similarly, the House district in the southeast composed of the Counties of Nansemond and the Isle of Wight and the City of Suffolk have 65 percent of the appropriate representation and they are in a Senate district with 112 percent of its appropriate representation.

Appellants contend (Br. 45-46) that the Virginia apportionment is not unconstitutional because Virginia ranks eighth among the States in the representativeness of its legislature (see R. 266). However, this figure is based on the percentage of people electing a majority of the two houses of the legislature. Under the 1962 statute, 41.1 percent of the population elects a majority of the Senate and 40.5 percent elects a majority of the House. These figures are relevant to the fourth principle advanced by the government in its brief in the Maryland case (pp. 46-50)—whether an apportionment so grossly discriminates as to give control of the legislature to a substantial minority of the people. But this question, in the government's view, need not be reached in this case. We believe that a State may not apportion its legislature so as to discriminate significantly against a substantial number of voters when it can suggest no rational basis for the discrimination, even though a large minority is needed to elect a majority of the legislature.

This Court has repeatedly held that legislative classifications may not be arbitrary and capricious. "The Constitution in enjoining the equal protection of the laws upon States precludes irrational discrimination as between persons or groups of persons in the incidence of a law." *Goesaert v. Cleary*, 335 U.S. 464, 466. See, e.g., *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415; *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79. Virginia, by giving some

counties and cities two or more times the representation of other counties or cities, has obviously made a classification to the detriment of the under-represented areas. Such a classification must rest at the very least, upon some intelligible foundation or else be condemned as a denial of equal protection. The several explanations advanced by appellants are manifest afterthoughts and do not conform to the facts. No other justification is reasonably apparent. Under these circumstances there was no occasion for the district court to look farther before ruling that the apportionment violates the Fourteenth Amendment. "Discriminations are not to be supported by mere fanciful conjecture." *Hartford Co. v. Harrison*, 301 U.S. 459, 462; *Borden's Farm Products Co. v. Baldwin*, 293 U.S. 194, 209.<sup>25</sup>

<sup>25</sup> Appellants raise no issue as to the remedy ordered by the district court—i.e., an injunction against further elections under the present apportionment statutes. The traditional remedy when a State statute is held unconstitutional is to enjoin further actions based on it. The State and lower federal courts have in numerous cases used this remedy in the field of apportionment. E.g., *Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala.), pending on appeal *sub. nom. Reynolds v. Sims*, Nos. 23, 27, 41, this Term; *Thigpen v. Meyers*, U.S. D.C., W.D. Wash., decided May 3, 1963; *Scholle v. Secretary of State*, 367 Mich. 176, 116 N.W. 2d 350; *Parker v. State*, 133 Ind. 178, 32 N.E. 836; *Denny v. State*, 144 Ind. 503, 42 N.E. 929; *Brooks v. State*, 162 Ind. 568, 70 N.E. 980; *Ragland v. Anderson*, 125 Ky. 141, 100 S.W. 865; *Armstrong v. Mitten*, 95 Colo. 425, 37 P. 2d 757; *Stiglitz v. Schar dien*, 239 Ky. 799, 40 S.W. 2d 315; *Rogers v. Morgan*, 127 Neb. 456, 256 N.W. 1; *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 53 N.W. 35; *State ex rel. Attorney General v. Cunningham*, 81 Wis. 440, 51 N.W. 724; *Asbury Park Press, Inc. v. Wooley*, 33 N.J. 1, 161 A. 2d 705, 713-714.

## CONCLUSION

For the foregoing reasons, we respectfully submit that the decision of the district court should be affirmed.

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OCTOBER 1963.

## APPENDIX A

Sections 40 to 43 of Article IV of the Virginia Constitution provide as follows:

*Section 40.* The legislative power of the State shall be vested in a general assembly which shall consist of a senate and house of delegates.

*Section 41.* The senate shall consist of not more than forty and not less than thirty-three members; who shall be elected quadrennially by the voters of the several senatorial districts on the Tuesday succeeding the first Monday in November.

*Section 42.* The house of delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters of the several house districts, on the Tuesday succeeding the first Monday in November.

*Section 43.* The present apportionment of the Commonwealth into senatorial and house districts shall continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter.

Chapter 635 of the Virginia Acts of Assembly for 1962, approved April 7, 1962, provides as follows:

*Be it enacted by the General Assembly of Virginia:*

That § 24-14, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 24-14. The State is hereby divided into thirty-six districts entitled to senators as follows:

First.—*The counties of Accomack, Northampton, Princess Anne and the city of Virginia Beach, one.*

Second.—Norfolk city, two.

Third.—Norfolk county and *the city of South Norfolk*, one.

Fourth.—*The counties of Halifax, Charlotte and Prince Edward and the city of South Boston*, one.

Fifth.—*The counties of Isle of Wight, Nansemond, Southampton and the cities of Suffolk and Franklin*, one.

Sixth.—*The counties of Greensville, Prince George Surry and Sussex and the city of Hopewell*, one.

Seventh.—*The counties of Brunswick, Lunenburg and Mecklenburg*, one.

Eighth.—*The counties of Dinwiddie, Nottoway and the city of Petersburg*, one.

Ninth.—*Arlington county*, one.

Tenth.—*City of Portsmouth*, one.

Eleventh.—*The counties of Appomattox, Buckingham, Cumberland, Powhatan, Amherst, Nelson and Amelia*, one.

Twelfth.—*Campbell county and city of Lynchburg*, one.

Thirteenth.—*The counties of Henry, Patrick and Pittsylvania and the cities of Danville and Martinsville*, two.

Fourteenth.—*The counties of Smyth, Carroll, Floyd, Grayson and the city of Galax*, one.

Fifteenth.—*The counties of Washington, Lee and Scott and the city of Bristol*, one.

Sixteenth.—*The counties of Dickenson and Wise and the city of Norton*, one.

Seventeenth.—*The counties of Buchanan, Russell and Tazewell*, one.

Eighteenth.—*The counties of Bland, Giles, Pulaski and Wythe*, one.

Nineteenth.—*The counties of Alleghany, Bedford, Botetourt, Craig and Rockbridge, and the cities of Buena Vista, Clifton Forge, and Covington*, one.

Twentieth.—*The counties of Franklin, Montgomery, and Roanoke, and the city of Radford, one.*

Twenty-first.—*The counties of Augusta, Bath, and Highland, and the cities of Staunton and Waynesboro, one.*

Twenty-second.—*The counties of Page, Rapahannock, Rockingham and Warren, and the city of Harrisonburg, one.*

Twenty-third.—*The counties of Clarke, Frederick, Shenandoah and the city of Winchester, one.*

Twenty-fourth.—*The counties of Albemarle, Fluvanna, Greene and Madison, and the city of Charlottesville, one.*

Twenty-fifth.—*The counties of Goochland, Louisa, Orange and Spotsylvania, and the city of Fredericksburg, one.*

Twenty-six.—*The counties of Culpeper, Fauquier and Loudoun, one.*

Twenty-seventh.—*The county of Fairfax and the cities of Fairfax and Falls Church, two.*

Twenty-eighth.—*The counties of King George, Lancaster, Northumberland, Prince William, Richmond, Stafford and Westmoreland, one.*

Twenty-ninth.—*The counties of Caroline, Hanover, King William, Essex, King and Queen, Middlesex, Gloucester and Mathews, one.*

Thirtieth.—*City of Newport News and county of York, one.*

Thirty-first.—*City of Hampton, one.*

Thirty-second.—*The counties of Charles City, Chesterfield, James City and New Kent and the cities of Colonial Heights and Williamsburg, one.*

Thirty-third.—*Richmond city, two.*

Thirty-fourth.—*County of Henrico, one.*

Thirty-fifth.—*City of Roanoke, one.*

Thirty-sixth.—*City of Alexandria, one.*

Chapter 638 of the Virginia Acts of Assembly for 1962, approved April 7, 1962, provides as follows:

That § 24-12, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 24-12. Members of the House of Delegates shall be distributed and apportioned, and each county, city and combination is entitled to representation in the House of Delegates by a delegate, or by delegates, as follows:

First.—Accomack, one.

Second.—Accomack and Northampton, one.

Third.—Albemarle and Greene, one.

Fourth.—Charlottesville, one.

Fifth.—Alexandria, *two*.

Sixth.—Alleghany, Covington and Clifton Forge, one.

Seventh.—Amelia, Powhatan and Nottoway, one.

Eighth.—Amherst and Lynchburg, one.

Ninth.—Arlington, three.

Tenth.—Augusta, Highland, Staunton and Waynesboro, two.

Eleventh.—Bedford, one.

Twelfth.—Bland and Giles, one.

Thirteenth.—Botetourt, Craig and Roanoke County, one.

Fourteenth.—Brunswick and Lunenburg, one.

Fifteenth.—Buchanan, one.

Sixteenth.—*Russell* and Dickenson, one.

Seventeenth.—Buckingham, Appomattox and Cumberland, one.

Eighteenth.—Campbell, one.

Nineteenth.—Caroline, King George, Essex and King and Queen, one.

Twentieth.—Carroll and Floyd, one.

Twenty-first.—Charles City, James City, New Kent, York and Williamsburg, one.

Twenty-second.—Charlotte and Prince Edward, one.

Twenty-third.—Chesterfield and Colonial Heights, one.

Twenty-fourth.—Clarke, Frederick and Winchester, one.

Twenty-fifth.—Danville, one.

Twenty-sixth.—Hampton, one.

Twenty-seventh.—Fairfax, *and cities of Fairfax and Falls Church, three.*

Twenty-eighth.—Fauquier and Rappahannock, one.

Twenty-ninth.—Fluvanna, Goochland and Louisa, one.

Thirtieth.—Franklin, one.

Thirty-first.—Gloucester, Mathews and Middlesex, one.

Thirty-second.—Grayson and Galax, one.

Thirty-third.—Greensville and Sussex, one.

Thirty-fourth.—Halifax *and South Boston*, one.

Thirty-fifth.—Hanover and King William, one.

Thirty-sixth.—Henrico, one.

Thirty-seventh.—Henry, Patrick and Martinsville, two.

Thirty-eighth.—Isle of Wight, Nansemond and Suffolk, one.

Thirty-ninth.—Northumberland, Westmoreland, Lancaster and Richmond county, one.

Fortieth.—Newport News, three.

Forty-first.—Lee, *Wise, and city of Norton*, two.

Forty-second.—Loudon, one.

Forty-third.—Lynchburg, one.

Forty-fourth.—Madison, Culpeper and Orange, one.

Forty-fifth.—Mecklenburg, one.

Forty-sixth.—Montgomery and Radford, one.

Forty-seventh.—Nansemond and Suffolk, one.

Forty-eighth.—Nelson and Amherst, one.

Forty-ninth.—Norfolk county and South Norfolk, two.

Fiftieth.—Norfolk city, six.

Fifty-first.—Page and Warren, one.

Fifty-second.—Petersburg and Dinwiddie, two.

Fifty-third.—Pittsylvania, two.

Fifty-fourth.—Portsmouth, two.

Fifty-fifth.—Prince George, Surry and Hopewell, one.

Fifty-sixth.—Princess Anne and Virginia Beach, two.

Fifty-seventh.—Prince William, one.

Fifty-eighth.—Pulaski, one.

Fifty-ninth.—Richmond city, and Henrico, eight.

Sixtieth.—Roanoke County, one.

Sixty-first.—Roanoke city, two.

Sixty-second.—Rockbridge, Bath and Buena Vista, one.

Sixty-third.—Rockingham and Harrisonburg, two.

Sixty-fourth.—Shenandoah, one.

Sixty-fifth.—Smyth, one.

Sixty-sixth.—Southampton and the city of Franklin, one.

Sixty-seventh.—Spotsylvania, Stafford, and Fredericksburg, one.

Sixty-eighth.—Tazewell, one.

Sixty-ninth.—Washington, Scott and Bristol, two.

Seventieth.—Wythe, one.

And the districts hereby created are hereby numbered one (1) to seventy (70) inclusive.

Section 17 of 24 Virginia Code (1950) provides:

Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the election, in which he offers to vote, has been duly registered, and has paid his State poll taxes, as required by law, and is otherwise qualified, under the Constitution and laws of

this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

Section 18 of 24 Virginia Code (1950) provides:

The following persons shall be excluded from registering and voting: Idiots, insane persons and paupers; persons who, prior to the adoption of the Constitution, were disqualified from voting by conviction of crime, either within or without the State, and whose disabilities shall not have been removed; persons convicted after the adoption of the Constitution, either within or without this State, for treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery or perjury; persons who, while citizens of this State since the adoption of the Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel.

Section 23.1 of 24 Virginia Code (1962 Supp.) provides:

Whenever a majority of the judges of election of any precinct are satisfied, by such evidence as they may deem proper, that a person offering to vote in person in any election, is in active service as a member of the armed forces of the United States in time of war, and that such person is otherwise qualified to vote, they shall permit such person to vote in such election (and also in any second primary election that may be held in connection therewith)

without being required to register or to pay any poll tax; provided, however, that such person shall execute and file with the judges of election an affidavit, subscribed and sworn to before a judge of election, substantially as follows:

"I do swear (or affirm) that I am now and have been a citizen and domiciliary resident of Virginia since the -- day of -----, 19--, and am a resident of the ----- (city or county) of ----- (name of city or county) residing at ----- (street and number or place of residence therein) and am now in active service in the armed forces of the United States; that I am twenty-one years of age; and that by exercising the privilege of voting I acknowledge and accept all of the responsibilities and obligations of full citizenship of the Commonwealth of Virginia. The name or number of my voting precinct is ----- (if known, so state.)

"Subscribed and sworn to before me this -- day of -----, 19--

-----  
*Judge of Election."*

The affidavit shall be returned to the clerk's office with the ballots and shall be preserved by the clerk as a public record until such time as the judge of the circuit or corporation court of the county or city in whose clerk's office the affidavit is filed shall order the same to be destroyed.

Section 19 of Title 24 Virginia Code (1950) provides:

No officer, soldier, seaman or marine of the United States army or navy, shall be deemed to have gained a residence as to the right of suffrage in the State, or in any county, city or town thereof, by reason of his being stationed therein.

## APPENDIX B

### MILITARY POPULATIONS OF COUNTIES AND INDEPENDENT CITIES

Political subdivision	Male	Female	Total
<b>COUNTIES</b>			
Accomack	79		79
Albemarle	91		91
Allegany			
Amelia			
Amherst	8		8
Appomattox			
Arlington	10,628	748	11,376
Augusta	7		7
Bath			
Bedford	65		65
Bland			
Botetourt	80		80
Brunswick			
Buchanan	7		7
Buckingham			
Campbell	17		17
Caroline	93		93
Carroll			
Charles City			
Charlotte			
Chesterfield	214		214
Clarke	4		4
Craig			
Culpeper	4		4
Cumberland			
Dickenson			
Dinwiddie	40		40
Essex	11		11
Fairfax <sup>1</sup>	16,464	239	16,693
Fauquier	497	8	497
Floyd			
Fluvanna	7		7
Franklin	3		3
Frederick	30		30
Giles			

<sup>1</sup> This table is based on Table 83 of Book No. PC(1), 48C Va., *United States Census of Population 1960 Virginia: General Social and Economic Characteristics*, pp. 183-187, 224-234, which we are filing with the Clerk. The Census Bureau has informed us that the military population for females is determined by adding, in Table 83, the total of females employed and unemployed under the "Labor Force" subheading, and subtracting this sum from the total labor force.

The Court now has on file Book No. PC(1), 48D, Va., *United States Census of Population 1960 Virginia: Detailed Characteristics*, pp. 305-404. Table 115 of this book shows the total 1960 military population of Virginia and indicates the military population breakdown for standard metropolitan statistical areas and counties of 250,000 population or more.

<sup>2</sup> At the time of the census, the City of Fairfax was part of the County of Fairfax. Therefore, the County figures include the total of what is now the County and separate City of Fairfax.

# MILITARY POPULATIONS OF COUNTIES AND INDEPENDENT CITIES—Continued

Political subdivision	Male	Females	Total
counties—continued			
Glenumer	16		16
Goochland	3		3
Grayson	4		4
Greene			
Greensville	4		4
Hallifax	3		3
Hanover	9		9
Henrico	228		228
Henry			
Highland			
Isle of Wight	108		108
Jamestown City	217		217
King and Queen		4	4
King George	156	3	159
King William	4		4
Lancaster	7		7
Lee			
London	89		89
Louis	12		12
Lunenburg			
Mathews			
Mathews	16		16
Mecklenburg			
Middlesex			
Montgomery	34	4	38
Nammond	67		67
Nelson			
New Kent	3		3
Norfolk	301	8	309
Northampton	106		106
Northumberland			
Notoway	110		110
Orange			
Pas			
Patrick			
Pittsylvania	8		8
Powhatan			
Prince Edward	8		8
Prince George	5,270	78	5,348
Prince William	7,634	208	7,842
Princess Anne	2,325	19	2,344
Pulaski	13	4	17
Rappahannock			
Richmond			
Roanoke	41		41
Rockbridge	31		31
Rockingham			
Russell	8		8
Scott	4		4

# MILITARY POPULATIONS OF COUNTIES AND INDEPENDENT CITIES—Continued

Political subdivision	Male	Female	Total
<b>COUNTIES—continued</b>			
Shenandoah.....	8		8
Smyth.....	23	4	27
Southampton.....			
Spotylvania.....	22		22
Stafford.....	589		589
Sturry.....	4		4
Sumer.....			
Tazewell.....	9	4	13
Warren.....	7		7
Washington.....	4		4
Westmoreland.....			
Wise.....	20		20
Wythe.....	4		4
York.....	1,648	8	1,656
<b>INDEPENDENT CITIES</b>			
Alexandria.....	3,603	48	3,741
Bristol.....	12	5	17
Buena Vista.....	7		7
Charlottesville.....	122		122
Clifton Forge.....			
Colonial Heights.....	245		245
Covington.....	12	3	15
Danville.....	8		8
Falls Church.....	274		274
Fredericksburg.....	139		139
Galax.....			
Hampton.....	6,376	100	6,476
Harrisonburg.....			
Hopewell.....	335		335
Lynchburg.....	31		31
Martinsville.....			
Newport News.....	8,332	163	8,495
Norfolk.....	43,946	435	44,381
Norton.....			
Petersburg.....	590	4	594
Portsmouth.....	10,354	108	10,462
Radford.....	3		3
Richmond.....	196	4	200
Rosnoke.....	71	4	75
South Boston.....			
South Norfolk.....	219	3	222
Staunton.....	16		16
Suffolk.....	18		18
Virginia Beach.....	704		704
Waynesboro.....	4		4
Williamsburg.....	97		97
Winchester.....	4	4	8
<b>Total.....</b>	<b>130,804</b>	<b>2,278</b>	<b>133,082</b>

**REPRESENTATION IN THE SENATE EXCLUDING MILITARY  
PERSONNEL AND THEIR FAMILIES**

Senatorial District	Total ci- villian pop- ulation (1960)	Total pop- ulation, minus 3/4 times the number of military personnel (1960)	Number of senators	Civilian population per senator	Population, minus 3/4 times the number of military personnel, per senator
Accomack.....					
Northampton.....					
Princess Anne.....	121,290	105,801	1	121,290	105,801
City of Virginia Beach.....					
Norfolk City.....	261,491	194,299	2	130,745	97,490
Norfolk County.....					
City of South Norfolk.....	72,816	70,820	1	72,816	70,820
Hollier.....					
Charlotte.....					
Prince Edward.....	67,089	67,073	1	67,089	67,073
City of South Boston.....					
Isle of Wight.....					
Newsom.....					
Southampton.....	88,144	87,889	1	88,144	87,889
City of Suffolk.....					
City of Franklin.....					
Greensville.....					
Prince George.....					
Surry.....	57,264	58,734	1	57,264	58,734
Sumner.....					
Hopewell.....					
Brunswick.....					
Lunenburg.....	61,730	61,730	1	61,730	61,730
Mecklenburg.....					
Dinwiddie.....					
Nettloway.....	72,321	72,192	1	72,321	72,192
City of Petersburg.....					
Arlington.....	182,025	184,961	1	182,025	184,961
City of Portsmouth.....	104,261	88,498	1	104,261	88,498
Appomattox.....					
Buckingham.....					
Cumberland.....					
Powhatan.....	78,644	78,632	1	78,644	78,632
Amherst.....					
Nelson.....					
Amelia.....					
Campbell.....	87,700	87,628	1	87,700	87,628
City of Lynchburg.....					
Henry.....					
Patrick.....					
Pittsylvania.....	178,272	178,248	2	89,636	89,624
City of Danville.....					
City of Martinsville.....					
Smyth.....					
Cayroll.....					
Floyd.....	87,319	87,373	1	87,319	87,373
Grayson.....					
City of Galax.....					

# REPRESENTATION IN THE SENATE EXCLUDING MILITARY PERSONNEL AND THEIR FAMILIES—Continued

Senatorial District	Total ci- vilian pop- ulation (1960)	Total pop- ulation, minus 3/4 times the number of military personnel (1960)	Number of senators	Civilian population per senator	Population, minus 3/4 times the number of military personnel, per senator
Washington.....					
Lee.....	104,532	104,795	1	104,532	104,795
Scott.....					
City of Bristol.....					
Dickenson.....	68,798	68,736	1	68,798	68,736
Wise.....					
City of Norton.....					
Buchanan.....	107,777	107,735	1	107,777	107,735
Russell.....					
Tazewell.....					
Bland.....	72,413	72,382	1	72,413	72,382
Giles.....					
Pulaski.....					
Wythe.....					
Allegany.....					
Bedford.....					
Botetourt.....					
Craig.....	109,698	109,401	1	109,698	109,401
Rockbridge.....					
City of Buena Vista.....					
City of Clifton Forge.....					
City of Covington.....					
Franklin.....					
Montgomery.....	129,827	129,700	1	129,827	129,700
Roanoke.....					
City of Radford.....					
Augusta.....					
Bath.....	83,818	83,778	1	83,818	83,778
Highland.....					
City of Staunton.....					
City of Waynesboro.....					
Page.....					
Rappahannock.....	87,989	87,979	1	87,989	87,979
Rockingham.....					
Warren.....					
City of Harrisonburg.....					
Clarke.....					
Frederick.....	66,766	66,663	1	66,766	66,663
Shenandoah.....					
City of Winchester.....					
Albemarle.....					
Fluvanna.....	80,305	79,975	1	80,305	79,975
Greene.....					
Madison.....					
City of Charlottesville.....					

**REPRESENTATION IN THE SENATE EXCLUDING MILITARY PERSONNEL AND THEIR FAMILIES—Continued**

Senatorial District	Total civilian population (1960)	Total population, minus 2½ times the number of military personnel (1960)	Number of senators	Civilian population per senator	Population, minus 2½ times the number of military personnel, per senator
Goochland.....					
Louisiana.....					
Orange.....	82,325	82,028	1	82,325	82,028
Spotsylvania.....					
City of Fredericksburg.....					
Stafford.....					
Fauquier.....	63,143	62,308	1	63,143	62,308
Loudoun.....					
Fairfax.....					
City of Fairfax.....	268,227	242,777	2	134,113	121,388
City of Falls Church.....					
King George.....					
Lancaster.....					
Northumberland.....					
Prince William.....	103,063	91,074	1	103,063	91,074
Richmond.....					
Stafford.....					
Westmoreland.....					
Caroline.....					
Hanover.....					
King William.....					
Essex.....					
King and Queen.....	85,623	85,304	1	85,623	85,304
Middlesex.....					
Gloucester.....					
Mathews.....					
Consolidated City of Newport News.....	124,864	109,368	1	124,864	109,368
York.....					
City of Hampton.....	82,779	73,061	1	82,779	73,061
Charles City County.....					
Chesenterfield.....					
James City County.....	106,375	107,211	1	106,375	107,211
City of Colonial Heights.....					
City of Williamsburg.....					
New Kent.....					
City of Richmond.....	219,750	219,461	2	109,875	109,730
Henrico.....	117,111	116,760	1	117,111	116,760
City of Roanoke.....	97,085	96,923	1	97,085	96,923
City of Alexandria.....	87,382	81,671	1	87,382	81,671
Total.....	3,633,837	3,634,294	40	90,847	90,837

# **REPRESENTATION IN THE HOUSE OF DELEGATES EXCLUDING MILITARY PERSONNEL AND THEIR FAMILIES**

House district	Total civilian population (1900)	Total population minus 2 1/2 times the number of military personnel (1900)	Number of delegates	Civilian population per delegate	Population, less 2 1/2 times the number of military personnel, per delegate
Accomack.....	30,556	30,438	1	30,556	30,438
Accomack.....	47,323	46,906	1	47,323	46,906
Northampton.....	33,503	33,457	1	33,503	33,457
Greene.....	29,305	29,122	1	29,305	29,122
Charlottesville.....	67,362	61,671	2	63,641	40,535
Alexandria.....	28,443	28,421	1	28,443	28,421
City of Covington.....					
City of Clifton Forge.....					
Amelia.....	29,593	29,428	1	29,593	29,428
Powhatan.....					
Nottoway.....					
Amherst.....	77,704	77,646	1	77,704	77,646
City of Lynchburg.....					
Arlington.....	182,025	134,961	3	60,675	44,987
Augusta.....					
Highland.....	78,463	78,443	2	39,241	38,221
City of Staunton.....					
City of Waynesboro.....					
Bedford.....	30,963	30,866	1	30,963	30,866
Bland.....	23,301	23,301	1	23,301	23,301
Giles.....					
Botetourt.....	81,643	81,462	1	81,643	81,462
Craig.....					
Roanoke County.....					
Brunswick.....	30,302	30,302	1	30,302	30,302
Lunenburg.....	36,717	36,707	1	36,717	36,707
Buchanan.....	40,493	40,481	1	40,493	40,481
Russell.....					
Dickenson.....	36,385	36,385	1	36,385	36,385
Buckingham.....					
Appomattox.....	32,941	32,916	1	32,941	32,916
Cumberland.....					
Campbell.....					
Caroline.....					
King George.....	32,280	31,880	1	32,280	31,880
Essex.....					
King and Queen.....					
Carroll.....	33,640	33,640	1	33,640	33,640
Floyd.....					
Charles City County.....					
James City County.....					
New Kent.....	47,977	45,018	1	47,977	45,018
York.....					
City of Williamsburg.....					
Charlotte.....	27,481	27,469	1	27,481	27,469
Prince Edward.....					

# REPRESENTATION IN THE HOUSE OF DELEGATES EXCLUDING MILITARY PERSONNEL AND THEIR FAMILIES—Continued

House district	Total civilian population (1960)	Total population, minus 3/4 times the number of military personnel (1960)	Number of delegates	Civilian population per delegate	Population, less 3/4 times the number of military personnel, per delegate
Chesterfield.....	80,325	79,637	1	80,325	79,637
City of Colonial Heights.....					
Clarke.....	44,951	44,888	1	44,951	44,888
Frederick.....					
City of Winchester.....	44,569	44,537	1	44,569	44,537
City of Danville.....	32,779	32,661	1	32,779	32,661
City of Hampton.....					
Fairfax County.....	268,227	242,777	3	89,409	80,926
City of Fairfax.....					
City of Falls Church.....					
Fauquier.....	28,987	28,192	1	28,987	28,192
Rappahannock.....					
Spotsylvania.....	29,368	29,332	1	29,368	29,332
Goochland.....					
Louisiana.....	25,922	25,913	1	25,922	25,913
Franklin.....					
Gloucester.....	25,327	25,279	1	25,327	25,279
Mathews.....					
Middlesex.....					
Grayson.....	22,640	22,634	1	22,640	22,634
City of Galax.....					
Greensville.....	28,562	28,556	1	28,562	28,556
Sumner.....					
Hallifax.....	39,608	39,603	1	39,608	39,603
City of South Boston.....					
Hanover.....	35,190	35,081	1	35,190	35,081
King William.....					
Henrico.....	117,111	116,769	1	117,111	116,769
Henry.....					
Patrick.....	37,307	37,307	2	37,307	37,307
City of Martinsville.....					
Isle of Wight.....					
Nampano.....	60,949	60,964	1	60,949	60,964
City of Suffolk.....					
Northumberland.....					
Westmoreland.....	36,769	36,759	1	36,769	36,759
Lancaster.....					
Richmond County.....					
City of Newport News.....	104,667	91,925	3	34,889	30,641
Lee.....					
Wise.....	37,183	37,366	2	37,183	37,183
City of Norton.....					
Loudoun.....	34,400	34,402	1	34,400	34,402
City of Lynchburg.....	54,759	54,713	1	54,759	54,713
Madison.....					
Culpeper.....	36,171	36,165	1	36,171	36,165
Orange.....					
Mecklenburg.....	31,428	31,428	1	31,428	31,428
Montgomery.....	42,263	42,192	1	42,263	42,192
City of Radford.....					

# REPRESENTATION IN THE HOUSE OF DELEGATES EXCLUDING MILITARY PERSONNEL AND THEIR FAMILIES—Continued

House district	Total civilian population (1960)	Total population, minus 2½ times the number of military personnel (1960)	Number of delegates	Civilian population per delegate	Population, less 2½ times the number of military personnel, per delegate
Nansemond.....	43,890	43,763	1	43,890	43,763
City of Suffolk.....					
Nelson.....	35,697	35,685	1	35,697	35,685
Amherst.....					
Norfolk County.....	72,516	70,630	2	36,258	35,315
City of South Norfolk.....					
City of Norfolk.....	261,491	194,930	6	43,582	32,487
Page.....	30,220	30,210	1	30,220	30,210
Warren.....					
City of Petersburg.....	58,290	57,326	2	29,145	28,663
Dinwiddie.....					
Pittsylvania.....	58,288	58,276	2	29,144	29,138
City of Portsmouth.....	164,251	88,468	2	82,125	44,234
Prince George.....					
Surry.....	38,702	36,178	1	38,702	36,178
City of Hopewell.....					
Princess Anne.....	73,967	58,596	2	36,983	29,297
City of Virginia Beach.....					
Prince William.....	42,925	32,067	1	42,925	32,067
Pulaski.....	27,341	27,316	1	27,341	27,316
City of Richmond.....	336,870	336,280	8	42,109	42,035
Henrico.....					
Roanoke County.....	61,632	61,591	1	61,632	61,591
City of Roanoke.....	97,085	94,923	2	48,542	47,461
Rockbridge.....					
Bath.....	35,686	35,579	1	35,686	35,579
City of Buena Vista.....					
Rockingham.....	52,401	52,401	2	26,200	26,200
City of Harrisonburg.....					
Shenandoah.....	21,817	21,805	1	21,817	21,805
Smyth.....	31,089	30,969	1	31,089	30,969
Southampton.....	27,195	27,195	1	27,195	27,195
City of Franklin.....					
Spoetrylvania.....					
Stafford.....	43,564	43,409	1	43,564	43,409
City of Fredericksburg.....					
Tazewell.....	44,778	44,486	1	44,778	44,782
Washington.....					
Scott.....	61,608	60,971	2	30,804	30,485
City of Bristol.....					
Wythe.....	21,971	21,965	1	21,971	21,965
Total.....	3,832,867	3,644,344	100	38,330	36,442

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In the  
**Supreme Court of the United States**  
October Term, 1903

No. 69

**LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,**

*Appellants,*

v.

**HARRISON MANN, ET AL.,**

*Appellees.*

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

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In the  
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**October Term, 1963**

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No. 69

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LEVIN NOCK DAVIS, SECRETARY, STATE  
BOARD OF ELECTIONS, ET AL.,

*Appellants,*

v.

HARRISON MANN, ET AL.,

*Appellees.*

Appeal from the United States District Court for the  
Eastern District of Virginia at Alexandria

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**REPLY BRIEF ON BEHALF OF APPELLANTS**

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**PRELIMINARY STATEMENT**

For the reasons stated in their opening brief, elaboration of which is made in this reply brief, appellants reaffirm their position that the decision of the court below should be reversed and the cause remanded to the District Court with instructions to (1) dismiss the complaint on the merits or (2) in the alternative, to abstain from conducting further proceedings pending decisions of the case of *Tyler v. Davis* by the Supreme Court of Appeals of Virginia.

## ARGUMENT

## I.

**The Doctrine of Abstention May Be Applied in Apportionment Cases and Should Be Applied Under the Facts and Circumstances of This Case**

The majority of the court below, in the opinion by Albert V. Bryan, Circuit Judge, stated that there was no precedent for abstention in the circumstances of this case, but the dissenting judge pointed to the concurring opinion of Mr. Justice Clark in *Baker v. Carr*, 369 U. S. 186, wherein it was said at pp. 258-259:

“\* \* \* Although I find the Tennessee apportionment statute offends the Equal Protection Clause, *I would not consider intervention by this Court into so delicate a field if there were any other relief available to the people of Tennessee.* But the majority of the people of Tennessee have no ‘practical opportunities for exerting their political weight at the polls’ to correct the existing ‘invidious discrimination.’ Tennessee has no initiative and referendum. I have searched diligently for other ‘practical opportunities’ present under the law. *I find none other than through the federal courts.* The majority of the voters have been caught up in a legislative strait jacket. Tennessee has an ‘informed civically militant electorate’ and ‘an aroused popular conscience,’ but it does not sear ‘the conscience of the people’s representatives.’ This is because the legislative policy has rivited the present seats in the Assembly to their respective constituencies, and by the votes of their incumbents a reapportionment of any kind is prevented. *The people have been rebuffed at the hands of the Assembly; they have tried the constitutional convention route, but since the call must originate in the Assembly it, too, has been fruitless. They have tried Tennessee courts with the same result, and Governors have fought the tide only to flounder.* \* \* \*” (Italics supplied)

See, also, McCloskey: Forward—The Reapportionment Case, 76 Harv. L. Rev. 54, 73.

The question of reapportionment of state legislatures is one of supreme sensitivity and intervention by the federal courts should not be considered except as a last resort. As previously pointed out in the appellants' opening brief, the appellees have an adequate remedy in the state courts and, in fact, such remedy has been invoked by certain individuals similarly situated to the appellees.<sup>1</sup> Thus, under the facts and circumstances surrounding this case, to employ federal equity jurisdiction and the extraordinary remedy of injunction in so delicate a field is to create needless friction with state policy and should have been avoided by the court below in the exercise of its discretion.

The dissenting judge in the court below also found that numerous cases had sanctioned abstention on the grounds of comity in order to avoid needless friction with state policies. It is respectfully submitted that such cases are applicable here.

Intervention by the federal courts in cases involving apportionment statutes is analogous with the exercise of federal equity jurisdiction in cases involving the enforcement of state criminal laws, and the same result, namely abstention, should be reached in both instances. Surely it must be said that the independence of a state government depends as much upon the right to have state courts initially pass upon an apportionment statute as it does upon the right to have state courts enforce a criminal law.

As late as June 17, 1963, this court affirmed, *per curiam*, an appeal from a decision of a three-judge court in the

<sup>1</sup> See letter-opinion of the Judge of the Circuit Court of the City of Richmond, dated September 19, 1963, in *Tyler v. Davis*, Chancery Docket No. 7946-C, attached as Appendix I, and order of October 11, 1963, entered pursuant thereto and attached as Appendix II to this reply brief.

United States District Court for the Eastern District of Virginia, dismissing a complaint for declaratory judgment and injunctive relief under the Civil Rights Acts. *Robinson v. Hunter*, 374 U. S. 488; *sub nom.*, *Henderson v. Trailway Bus Company*, 194 F. Supp. 423 (1961).

In the *Henderson* case, *supra*, the plaintiffs had been threatened with prosecution under the criminal trespass statutes of Virginia. The three-judge court, in its opinion by Albert V. Bryan, then District Judge, held that there were no unusual circumstances to justify a federal court's interference and that irreparable injury to the plaintiffs through submission of their federal contentions to the state courts was not demonstrated (194 F. Supp. at p. 427).

Just as in *Henderson v. Trailway Bus Company*, *supra*, there are no unusual circumstances in this case to justify intervention by the federal court below. The appellees will suffer no irreparable injury by the Court's applying the doctrine of abstention. The members of the House of Delegates of Virginia are elected on the Tuesday succeeding the first Monday in November in the odd years, for a two-year term to begin on the second Wednesday in January succeeding their election. See Section 24-11 of the Code of Virginia, as amended. Section 24-13 of the Code of Virginia provides that the members of the Senate shall be elected on the Tuesday succeeding the first Monday in November in 1951 and every four years thereafter, for a term of four years to begin on the second Wednesday in January succeeding their election. Thus, it can be seen that there is no real urgency, since no court decision can affect the membership of the House of Delegates until January, 1966, or of the Senate of Virginia until January, 1968.

As to producing long delays,<sup>2</sup> the appellees now have a vehicle upon which they may travel with deliberate speed—the case of *Tyler v. Davis*, *supra*, which is now ripe for appeal to the Supreme Court of Appeals of Virginia.

Again, wherein is the urgency which demands intervention into so delicate a field of state government? This is not a case wherein the appellees have been incarcerated or have been threatened with loss of their personal liberty. This is not a segregation case wherein the appellants have been charged with discrimination because of race. Compare *McNeese v. Board of Education*, 373 U.S. 668 (1963), wherein this court held that the plaintiffs did not have to exhaust the administrative remedies provided by Illinois law in segregation cases, and pointed out that the right alleged by the plaintiffs “is as plainly federal in origin and nature as those vindicated in *Brown v. Board of Education*, 347 U. S. 483.”

The issues before the court in this particular case are ones of first impression. There have been no decisions of this court, with which the appellants are familiar, that have held that the doctrine of abstention should not be applied in apportionment cases. Furthermore, under the particular facts and circumstances in *this* case, the decisions of the federal district courts on the question of the constitutionality

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<sup>2</sup>The Solicitor General seems to argue on page 18 of his brief *amicus curiae* that abstention should not be applied since it produces long delays. If this argument is followed, it would appear that the doctrine of abstention would have to be repudiated. Some delay is unavoidable and it would be a most difficult task to determine how long is a long delay for the purposes of knowing whether the doctrine of abstention should be applied or should not be applied. See, *Chicago & Fieldcrest Dairies*, 316 U. S. 168, 172, 173.

In this connection, it should be noted that the Solicitor General is in error when he states in footnote 5 of his brief that this court ultimately reversed and held unconstitutional a statute that was before it in *Harrison v. NAACP*, 360 U. S. 167. See, *NAACP v. Button*, 371 U. S. 415, footnotes 1 and 2.

of apportionment statutes are not controlling if, indeed, material.

The majority opinion of the court below, merely stated that the strong implication of *Baker v. Carr*, *supra*, was that federal three-judge courts should resolve this type of litigation, ignoring Mr. Justice Clark's concurring opinion and citing only *Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga. 1962). In answer, it seems necessary only to quote Walter E. Hoffman, District Judge, in his dissenting opinion wherein it was said:

"\* \* \* Since *Baker v. Carr* there have been only two cases from which it appears that the doctrine of abstention was affirmatively raised, where the court declined to abstain. In *Toombs v. Fortson*, 205 F. Supp. 248, a three-judge federal court in Georgia elected to dispose of the entire case without 'leaving part of it in limbo pending a later decision by a State Court.' Such is not this case. I do not agree with that portion of the opinion in *Toombs v. Fortson* which intimates that *Baker v. Carr* has held that the doctrine of abstention should be ignored in apportionment cases. Likewise in *Sanders v. Gray*, D.C., 203 F. Supp. 158, a three-judge federal court in Georgia, composed of two of the three judges sitting in *Toombs*, held that there was no adequate state remedy in view of the holding of the Supreme Court of Georgia in *Cox v. Peters* (1951), 208 Ga. 498, 67 S. E. 2d 579.

"Unlike *Lisco v. McNichols*, D.C., 208 F. Supp. 471, where the General Assembly of Colorado had repeatedly refused to apportion in accordance with the Colorado Constitution, Virginia has reapportioned at ten year intervals as required by the bare wording of her Constitution. To prevent a multitude of actions which will undoubtedly result following any hasty reapportionment at any extra session of the General Assembly of Virginia, the entire matter may be resolved by retaining jurisdiction and relegating the parties to the

state court for a decision under Virginia's Declaratory Judgment Act.

"Wisconsin, a state which claims greater proportionate representativeness than Virginia, has been involved in recent apportionment litigation. *Wisconsin v. Zimmerman*, 209 F. Supp. 183. Expressing a reluctance to enter orders or directives in such a case, the three-judge federal court dismissed the action without prejudice to the rights of plaintiffs to again file suit after August 1, 1963. The court noted that a great disparity in population did exist, although not comparable with Tennessee. The action by the federal court in Wisconsin was taken despite the fact that (1) the Wisconsin Supreme Court 'had again denied relief,' (2) the 1961 legislature did not comply with the requirements of the state constitution, (3) the 1962 special session did nothing to afford relief, and (4) the next session of the legislature would not convene until January, 1963. \* \* \*" (213 F. Supp. 590-591)

See also, *Lein v. Sathre*, 201 F. Supp. 535 (D.N.D., 1962); *League of Nebraska Municipalities v. March*, 209 F. Supp. 189 (D.Neb., 1962); and *Davis v. Synhorst*, 217 F. Supp. 492 (D.S.D. Iowa, 1963), wherein three-judge courts in apportionment cases withheld decisions on the merits.

The Solicitor General has stated in his brief that there is no serious doubt about the validity of Virginia's apportionment under the Constitution of Virginia (p. 17); that the Virginia Constitution contains no standards (p. 25) and that there is no apparent ground upon which the apportionment statutes could be held invalid under the Virginia Constitution (p. 22).

The majority of the court below stated that "there is little doubt that in Virginia population is the overriding consideration in any distribution of representatives" (*Mann v. Davis*, 213 F. Supp., at p. 584). If this be true, the Supreme Court of Appeals of Virginia could conceivably hold that

Sections 24-12 and 24-14 of the Code of Virginia violate Section 43 of the Constitution of Virginia. As a matter of comity, in order to avoid "needless friction with state policies," the state courts should first be allowed to determine this question.

As to other provisions of the Virginia Constitution which could conceivably invalidate the apportionment statutes, the appellants refer particularly to Sections 1 and 63<sup>3</sup> and respectfully submit that the Constitution of Virginia does guarantee the rights of citizens of Virginia and the equal protection of laws. See, *Taylor v. Smith*, 140 Va. 217, 232; *Gruber v. Commonwealth*, 140 Va. 312, 318; *Young's Case*, 101 Va. 853, 862, 863; *Avery v. Beale*, 195 Va. 690, 701; and *Brooks Transp. Co. v. Lynchburg*, 185 Va. 135, 142.

To conclude in the language of the dissenting judge:

"I agree that there is no ambiguity in the particular statutes under consideration and they are not in need of interpretation *per se*. As construed in conjunction with Sections 41, 42 and 43 of the Virginia Constitution, a state court determination will, at the very least, furnish a guide for future action. I cannot agree that we should disregard the doctrine of abstention merely because the subject matter of the inquiry lies within the competence of a federal court sitting in Virginia; nor do I believe that ambiguity and need for interpre-

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<sup>3</sup>Section 1 of Virginia Constitution reads as follows:

"That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

Section 63(18) of the Virginia Constitution provides that:

"The General Assembly shall not enact any local, special or private law \* \* \* granting to any \* \* \* individual any special right, privilege or immunity."

tation constitute the only basis for restoring to abstention. There are numerous cases where abstention has been sanctioned on grounds of comity with the States in order to avoid a result in 'needless friction with State policies.' *Railroad Com. of Texas v. Pullman Co.*, 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 971; *Pennsylvania v. Williams*, *supra*. That the United States Supreme Court favors the doctrine of abstention is apparent from its more recent decisions. *Harrison v. NAACP*, 360 U. S. 167, 79 S. Ct. 1025, 3 L. Ed. 2d 1152; *Louisiana Power & Light Co. v. Thibodaux*, 360 U. S. 25, 79 S. Ct. 1070, 3 L. Ed. 2d 1058; *Martin v. Creasy*, 360 U. S. 219, 79 S. Ct. 1034, 3 L. Ed. 2d 1186. Of the four cases decided on June 8, 1959, involving the doctrine of abstention, only the County of Alleghany v. Frank Mashuda Co., 360 U. S. 185, 79 S. Ct. 1060, 3 L. Ed. 2d 1163, did the Supreme Court reject abstention and the initial paragraph of the opinion pointedly suggests the case *'would not entail the possibility of a premature and perhaps unnecessary decision of a serious federal constitutional question, would not create the hazard of unsettling some delicate balance in the area of federal-state relationships, and would not even require the District Court to guess at the resolution of uncertain and difficult issues of state law.'*" (213 F. Supp. 590)

## II.

### Sections 24-12 and 24-14 of the Virginia Code Are Not Violative of the Fourteenth Amendment to the Constitution of the United States

As Mr. Justice Clark in *Baker v. Carr*, 369 U. S. 186, 251-252, so counsel for appellants take the law applicable to the case at bar from *MacDougall v. Green*, 335 U. S. 281, 283-284, in which case this Court declared:

*"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus, the Constitution protects the interests of the smaller against the greater by giv-*

ing in the Senate entirely unequal representation to populations. *It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses,* in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. *The Constitution—a practical instrument of government—makes no such demands on the States.*" (Italics supplied)

As Mr. Justice Stewart in *Baker*, *supra* at 265-266, counsel for appellants understand that the above-quoted principles constitute "settled precedents," which were left wholly undisturbed by this Court's opinion in *Baker* and which govern any consideration of the constitutional validity of State legislative reapportionments.

Of course, the Solicitor General of the United States finds no comfort whatever in the settled law, for the *per capita* postulates he espouses cannot possibly be squared with "the law of the case" as stated in *Baker*, *supra* at 251. It is not surprising therefore that (1) in the government's compendious brief in the Maryland case,<sup>4</sup> the Solicitor General casually asserts that the principles in question have no application to cases involving the reapportionment of State legislatures, despite their quotation by Justices Clark and Stewart in *Baker* (2) in the government's brief in the New York case,<sup>5</sup> the Solicitor General brushes aside as generalities what two members of this Court deemed settled precedents and (3) in the government's briefs in the Alabama and Virginia cases, no reference is made to these principles at all, and the *MacDougall* case is not even cited.

<sup>4</sup>Brief for the United States as Amicus Curiae, pp. 85-86.

<sup>5</sup>Brief for the United States as Amicus Curiae, p. 25.

Acceptance of the propositions advanced by the Solicitor General necessarily entails a total rejection of existing law. Despite the studied attempt to ignore annoying—though governing—principles, it is still the law that nothing in the Equal Protection Clause denies a State the power to assure a proper diffusion of political initiative between its rural and urban communities, in view of the fact that the latter have practical opportunities for asserting their political weight at the polls not available to the former. It is thus manifestly permissible for a State to classify its political subdivisions upon the basis of their rural or urban character and so structure its legislature as “to assure that its smaller and less populous areas and communities are not completely overridden by sheer weight of numbers.” *Baker v. Carr*, 206 F. Supp. 341, 345-346.

In Virginia, this is precisely what has been done. As pointed out in our opening brief, 20 of the 40 members of the Senate of Virginia represent urban areas of the Commonwealth, while 20 of the 40 members represent rural areas. Similarly, 48 of the 100 members of the House of Delegates of Virginia represent urban areas of the Commonwealth, while 52 of the 100 members represent rural areas. Nor does this balance between rural and urban areas stem from inclusion in the urban category of small cities not properly urban in character. See, Brief for the United States as Amicus Curiae, p. 42. Only two of the above-mentioned 20 Senators in the urban category represent areas not designated standard metropolitan statistical area by the United States Department of Commerce. See, Defendants' Exhibit No. 11, p. XXXII. Moreover, while representatives in the House of Delegates of Virginia from the cities of Lynchburg, Charlottesville and Petersburg are considered urban representatives, by no stretch of the imagination can

it be said that these cities are not urban in character. The problems facing these cities are the same urban renewal, sewage disposal, air pollution and traffic control problems which confront such larger metropolitan areas as Richmond, Arlington, Fairfax and Norfolk; they are not the problems of rural electrification, farm price stabilization, soil conservation and drought relief with which rural areas are concerned.

A plan of reapportionment designed to achieve precisely such an accommodation was approved with respect to the bicameral legislature of Illinois. See, *Germano v. Kerner*, 220 F. Supp. 230; In Illinois, the lower house is apportioned on the basis of population while the upper house is structured on the basis of geographical areas without regard to population. Sustaining the validity of this method of apportionment against assault under the Equal Protection Clause, the United States District Court for the Northern District of Illinois declared (220 F. Supp. at 232-233, 235):

"Plaintiffs' complaint alleges that the above discriminates against certain voters, particularly against those such as themselves who *live in metropolitan as opposed to rural areas*. This fact can hardly be denied. However, I am of the opinion that *these conditions do not constitute*, as contended by plaintiffs' complaint, *even an unreasonable much less an invidious discrimination as prohibited by the Fourteenth Amendment*.

\* \* \*

"\* \* \* On the other hand we are considering a plan intended to *somewhat counter-balance the relative political powers of the urban and agrarian voters*. We are considering a plan intended to assure each group control in only one house of a bicameral legislature.

\* \* \*

“\* \* \* The Act clearly was a compromise in order to settle, apparently satisfactorily to both sides, *some legislative equalization between voters in agrarian and rural areas on the one hand and urban or large city populations on the other*. In adopting this political and practical compromise, Illinois has done no more and no less in my opinion than to follow the example of the founding fathers in the Constitutional Convention at Philadelphia. Having recognized the necessity for protecting minority voting rights and local sovereignty, the founding fathers adopted the system still in use providing for the election of our bicameral Congress. As in Illinois, election to the upper house is based on geographical area, or if you will, a weighted voting system. Election to the lower house is based on population similar to Illinois. Should that which is deemed proper when observed in the presence of the federal government be suddenly deemed improper when associated with a sovereign State? Must the subject be more royal than the king? Must the State be more democratic than the United States?

\* \* \*

“In my opinion the Illinois system wherein one house of a bicameral legislature is not apportioned on a population basis, but rather, is apportioned with a definite and not irrational or capricious intention in mind of *balancing the divergent political interests of the state's large metropolitan area against the interests of the primarily rural 'down-state' area, does present a reasonable plan*. Further, this plan does in fact permit a reasonable, not a capricious or absurd, check upon the political power of the largely populated urban area.  
\* \* \*” (Italics supplied)

As the *per capita* principles of the Solicitor General are divorced from law, so is attempt to combat appellants' contention that it is permissible to exclude military related

population in determining the number of inhabitants of a House or Senate district for the purpose of representation in the General Assembly of Virginia is divorced from the well known facts of contemporary life. In this connection, it is initially significant that the Solicitor General does not undertake to controvert the assertion of appellants that such military related population is fundamentally transient in nature, possesses a high mobility rate and is essentially non-citizen in character.\* Indeed, his entire argument that the exclusion in question would constitute an invidious discrimination against such population *per se* is tucked away in a footnote<sup>7</sup> and amounts to no more than the naked statement that the above-mentioned characteristics of such population do not provide a valid basis for the exclusion.

Equally unsuccessful is the attempt to condemn the exclusion under consideration by the statement that the policy of Virginia, as evidenced by her election laws, actually favor military personnel. See, Brief for the United States as Amicus Curiae, p. 34. This observation is demonstrably inaccurate. Far from favoring military personnel as such, the Constitution and laws of Virginia expressly exclude from the right of suffrage any member of the armed forces whose residence in Virginia is occasioned solely by reason of his being stationed there. Section 24, Constitution of Virginia (1902); Section 24-19, Code of Virginia (1950). Thus, the policy of Virginia as evidenced by her election

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\*In Appendices III and IV of this brief, appellants have set out certain of the evidence adduced in the case of *Tyler v. Davis* in the Circuit Court of the City of Richmond supporting these characteristics of military related population. While such evidence is no part of the record in this case, it is indicative of the general character of the evidence by which appellants' description of such population may be supported.

<sup>7</sup>Brief for the United States as Amicus Curiae, pp. 38-39, footnote 18.

laws does not favor military personnel generally; it favors only those members of the military forces who are residents of Virginia other than by reason of their military assignments. Equally misleading is the declaration that military personnel who have been residents of Virginia for one year, residents of a county or city for six months and residents of a precinct for thirty days are entitled to vote. See, Brief for the United States as Amicus Curiae, p. 34. No such person is entitled to vote in Virginia unless his satisfaction of the residence requirements stems from some cause other than compliance with military orders.

On the basis of an additional publication of the United States Department of Commerce, Bureau of the Census, which he has filed with the Clerk of this Court, the Solicitor General has compiled Appendix B to the government's brief entitled "Military Populations of Counties and Independent Cities." See, Brief for the United States as Amicus Curiae, pp. 59-65. The tabulation in question reveals that only ten of the various counties and cities of Virginia have military populations in excess of 1,000 persons. These ten political subdivisions and the military population of each is revealed in the following summary:

Arlington .....	11,376
Fairfax .....	16,693
Prince George .....	5,326
Prince William .....	7,239
Princess Anne .....	9,544
Newport News .....	8,695
Norfolk .....	44,381
Portsmouth .....	10,522
Hampton .....	6,379
Alexandria .....	3,741

The substantial diminution in population variance ratios and variations from the average population per Senator and Delegate occasioned by the exclusion of military related population in determining the number of inhabitants in the relevant Senate and House districts is disclosed by the following tables, which are drawn from Defendants' Exhibits Nos. 7 and 8 (R. 275, 282) and the figures contained in Appendix B to the government's brief:

TABLE A

<u>Senate District</u>	<u>Total population per Senator as shown by Defendants' Exhibit No. 7 (R. 275)</u>	<u>Total population less 2½ times military forces per Senator</u>
1. Accomack (1) Northampton Princess Anne Virginia Beach	132,819	105,501
2. Norfolk City (2)	152,434	97,460
5. Prince George (1) Greenville Surry Sussex Hopewell	72,951	58,734
9. Arlington (1)	163,401	134,961
28. Prince William (1) King George Lancaster Northumberland Richmond County Stafford Westmoreland	111,059	91,074

<u>Senate District</u>	<u>Total population per Senator as shown by Defendants' Exhibit No. 7 (R. 275)</u>	<u>Total population less 2½ times military forces per Senator</u>
30. Newport News (1) York	135,245	109,368
36. Alexandria (1)	91,023	81,671
10. Portsmouth (1)	114,773	88,468
27. Fairfax (2)	136,337	115,128
31. Hampton (1)	89,258	73,061
Average per Senator (total population)	99,174	
Average per Senator (after deducting 2½ times military forces)		90,856

TABLE B

<u>House District</u>	<u>Total population per Delegate as shown by Defendants' Exhibit No. 8 (R. 282)</u>	<u>Total population less 2½ times military forces per Delegate</u>
56. Princess Anne Virginia Beach (2)	42,609	29,297
50. Norfolk (6)	50,811	32,487
55. Prince George Surry (1) Hopewell	44,385	30,178
9. Arlington (3)	54,467	44,987
57. Prince William (1)	50,164	32,067
40. Newport News (3)	37,887	30,641
5. Alexandria (2)	45,511	40,835
54. Portsmouth (2)	57,386	44,234
27. Fairfax, etc. (3)	90,891	76,752

<u>House District</u>	<u>Total population per Delegate as shown by Defendants' Exhibit No. 8 (R. 282)</u>	<u>Total population less 2½ times military forces per Delegate</u>
26. Hampton (1)	89,258	73,061
Average per delegate (total population)	39,669	
Average per Delegate (after deducting 2½ times military forces)		36,342

A canvass of Table A discloses that, with the exclusion of military related population, only two of the Senate districts in question contain populations which vary more than 25% from the average population per Senator. These are District 9 (Arlington County) which has a population approximately 50% more than the average, and District 5 (Prince George, etc.) which has a population approximately 40% less than the average. Reference to Table B discloses that only two of the House districts in question have populations which exceed 25% of the average population per Delegate. These are District 27 (Fairfax, etc.) and District 26 (Hampton), each of which has approximately twice as many inhabitants as the average per Delegate.<sup>8</sup>

So far as the city of Norfolk is concerned, even the Solici-

<sup>8</sup>The Solicitor General asserts (Brief, p. 39, footnote 17) that the population variance ratio between the most overrepresented House district (Shenandoah County) and Fairfax County, Fairfax City and Falls Church, after exclusion of military related population, is 3.71 to 1 rather than 3.53 to 1 as stated by appellants. The Solicitor General's assertion is based upon his utilization throughout the government's brief of the figure of 285,194 as the population of Fairfax County, Fairfax City and Falls Church. As indicated by Defendants' Exhibit No. 7 (R. 279, 281), the correct population figure for Fairfax County, Fairfax City and Falls Church is 272,674, which gives rise to a population variance ratio of 3.53 as stated by appellants.

tor General is compelled to admit that exclusion of military related population effects a "significant change" in the applicable figures for that city. See, Brief for the United States as Amicus Curiae, p. 37. Indeed, the figures contained in the tables set out above, which are precisely those contained in the tables set out on pages 36 and 38 of the government's brief and drawn from Appendix B to the government's brief, disclose that—with military related population excluded—Norfolk is only slightly overrepresented in the Senate (having a population of 97,460 inhabitants per Senator compared to the average population of 90,856 inhabitants per Senator) and is *actually overrepresented in the House of Delegates* (having a population of only 32,487 inhabitants per Delegate compared to the average population of 36,342 inhabitants per Delegate). It is thus unarguably apparent that exclusion of military related population completely destroys all foundation for any claim that the reapportionment statutes under consideration effect invidious discrimination against the city of Norfolk.

With the exclusion of military related population, the Solicitor General is reduced to the following criticism of the Virginia system (Brief of the United States as Amicus Curiae, p. 37):

"Using total population, minus  $2\frac{1}{2}$  times the number of military personnel, the three most overrepresented counties still have approximately twice the representation of Arlington and Fairfax. Twenty-two districts have over  $1\frac{1}{2}$  times the representation of Arlington, thirteen have over  $1\frac{1}{2}$  times the representation of Fairfax, and four have over  $1\frac{1}{2}$  that of Norfolk City."

○ Counsel for appellants submit that figures such as these do not begin to constitute "incommensurables of both mag-

nitude and frequency" which must exist before it can "be said that there is present an invidious discrimination." *Baker, supra* at 260. On the contrary, we submit that these figures disclose that the Solicitor General objects to the Virginia reapportionment system because it does not apply with mathematical nicety and results in some inequality, despite the admonition of this Court in *Morey v. Doud*, 354 U. S. 457, 463-464 that:

*"A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality."* (Italics supplied)

Although he states that it is unnecessary to decide the question in any of the reapportionment cases currently pending before this Court, the Solicitor General has suggested in the various government briefs that if representation in one house of a bicameral legislature is based upon population, representation in the other house may be based upon political subdivisions in recognition of the justification of giving independent political entities a voice in the legislative process. In Virginia, implementation of this scheme would entail making minor changes in the structure of Senate districts and increasing from 100 to 132 the maximum membership permissible in the House of Delegates so that each independent subdivision of the Commonwealth could be accorded one seat in the House. Under such plan, the population variance ratios between the five largest political subdivisions and the smallest political subdivision (Highland County) would be 68.3 to 1 for Fairfax County; 68.1 to 1 for Richmond City; 60.3 to 1 for Norfolk City; 41.9 to 1 for Arlington County and 36.2 to 1 for Henrico County. Manifestly, adoption of the method of apportionment sug-

gested as permissible by the Solicitor General would inordinately expand the maximum population variance ratios over those which exist under the current reapportionment, would greatly increase the magnitude and frequency of the incommensurables of reapportionment, would significantly lower Virginia's enviable position (8th) as compared to other States on the index of fairness of representation and would constitute a far more egregious departure from the basic *per capita* principle advanced by the Solicitor General than does the existing reapportionment.

With two observations of the Solicitor General, however, counsel for the appellants do not disagree. The first of these is set out in the government's compendious brief in the Maryland case (Brief for the United States as Amicus Curiae, p. 45) in the following language:

"The Court is not to exercise the legislative function of choosing between alternatives; still greater deference may be due the people of a State when exercising the sovereign function of shaping their own governmental institutions. The postulates of federalism also argue that in this area the national judiciary must take care to allow full scope for local self-government."

To this extent the Solicitor General echoes the salutary admonition of Mr. Justice Holmes in *Bain Peanut Company v. Pinson*, 282 U. S. 499, iterated by the dissenting judge in the court below (*Mann v. Davis*, 213 F. Supp. 577, 586) that:

"We must remember that the machinery of government would not work if it were not allowed a little play in its joints."

See, also, *Jackman v. Bodine*, 78 N. J. Super. 414, 188 A. (2d) 642, 651; *Levitt v. Maynard*, 104 N. H. 243, 182 A. (2d) 897, 900.

The second observation of the Solicitor General with which counsel for appellants are in complete accord is that contained in the government's brief in the case at bar (Brief for the United States as Amicus Curiae, p. 9), in which the end result of the Virginia reapportionment system is summarized in the following language:

"The evidence also showed that measured simply by the percentage of the population required to elect a majority in each House of the legislature, *Virginia ranks well up on the list of well-apportioned States.*"<sup>9</sup> (Italics supplied)

And so it does. As a matter of fact, Virginia ranks 8th in the United States in fairness of representation, based solely upon population figures which *include* military related population, subsequent to the enactment of the challenged redistricting statutes. Significant in connection with this fact is the failure of the Solicitor General, or any of counsel for the appellees, to suggest to this Court any escape from the dilemma which invalidation of the Virginia reapportionment system would entail. The scope of that dilemma may be emphasized by the following question:

If a State reapportionment system which (1) strikes an almost perfect balance between rural and urban representation (2) gives rise to no population variance ratio which exceeds that of the Electoral College of the United States and (3) causes a State to rank 8th in the United States in fairness of representation based solely upon population, offends the Equal Protection Clause

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<sup>9</sup>The Solicitor General (Brief, p. 9) initially states that it requires just under 40 per cent of the population to elect majorities in both the Senate and House of Delegates of Virginia. However, he later correctly points out that 41.1 per cent of the population elects a majority in the Senate and 40.5 per cent of the population elects a majority in House of Delegates. See, Defendants' Exhibit 5 (R. 263, 264).

of the Fourteenth Amendment, how can the reapportionment system of any of the 42 other States which results in greater population variance ratios and less fairness of representation based solely on population receive the approbation of this Court?

#### CONCLUSION

For the foregoing reasons, counsel for appellants submit that the decision of the court below should be reversed and the cause remanded to the District Court with instructions to (1) dismiss the complaint on the merits or (2) in the alternative, to abstain from conducting further proceedings pending decision of the case of *Tyler v. Davis* by the Supreme Court of Appeals of Virginia.

Respectfully submitted,

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**PROOF OF SERVICE**

I, R. D. McIlwaine, III, one of counsel for the appellants herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of November, 1963, I served copies of the within Reply Brief on Behalf of Appellants on the several appellees herein by mailing same in duly addressed envelopes, with first-class postage prepaid, to their respective attorneys of record as follows: Edmund D. Campbell, Esquire, Southern Building, Washington, D. C.; E. A. Prichard, Esquire, 106 N. Payne Street, Fairfax, Virginia; Sidney H. Kelsey, Esquire, 1408 Maritime Tower, Norfolk, Virginia; Henry E. Howell, Jr., Esquire, 808 Maritime Tower, Norfolk, Virginia; and Leonard B. Sachs, Esquire, Citizens Bank Building, Norfolk, Virginia.

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*Assistant Attorney General*

APPENDIX I.

CIRCUIT COURT  
OF THE  
CITY OF RICHMOND

RICHMOND, VIRGINIA

September 19, 1963

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Norfolk 10, Virginia

Robert Y. Button, Esquire  
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Henry T. Wickham, Esquire  
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RE: *N. P. Tyler and L. A. Jett, Jr. v. Levin Nock Davis,  
et al.*

Gentlemen:

This cause is now before this Court on transfer from the Circuit Court of the City of Norfolk which sustained the defendants' Motion to Dismiss for want of jurisdiction on the ground that the exclusive jurisdiction of such matters rested in this Court.

The plaintiffs who are residents and registered and qualified voters of the City of Norfolk and citizens of this Commonwealth and of the United States, instituted suit on behalf of themselves and other citizens similarly situated alleging

that Sections 24-12 and 24-14 of the Code of Virginia, as amended, reapportioning the Senate and House of Delegates in the General Assembly are violative of Section 43, Constitution of Virginia and of the Fourteenth Amendment of the United States Constitution in that such enactments effect invidious discrimination. The prayer of the Bill of Complaint for Injunction is that injunction should issue against the defendants to prohibit any elections—Primary or General—until such time as the General Assembly of Virginia convenes in Special Session and enacts legislation that will afford plaintiffs and others similarly situated fair and equal representation in said General Assembly.

The defendants who are members of the State Board of Elections of this Commonwealth and members of the Electoral Board of the City of Norfolk, filed their Answer denying that the challenged enactments are violative of either the Virginia or United States Constitution. In addition, the defendants filed their Cross-Bill alleging that the above Code sections, as amended in 1962, are valid enactments, infringe no rights secured to the plaintiffs under either constitutions and in no way effect invidious discrimination.

The question presented is whether or not Sections 24-12 and 24-14 of the Code of Virginia of 1950, as amended in 1962 (being Chapters 635 and 638, Acts of the General Assembly of Virginia, 1962), are violative of Section 43 of the Constitution of Virginia or of the Fourteenth Amendment of the United States Constitution.

Section 43 of the Constitution of Virginia reads as follows:

“Apportionment of Commonwealth into senatorial and house districts. — The present apportionment of the Commonwealth into senatorial and house districts shall

continue; but a reapportionment shall be made in the year nineteen hundred and thirty-two and every ten years thereafter."

No useful purpose would be served in setting forth the provisions of Sections 24-12 and 24-14 of the Code of Virginia.

If the only question was the regularity of reapportionment pursuant to Section 43 of the Virginia Constitution the issue could be quickly resolved as the Virginia Legislative history of reapportioning since 1900 is exemplary.

Since 1900 the House of Delegates has been reapportioned by the following acts: Acts of 1906, p. 84; Acts of 1910, p. 9; Acts of 1922, p. 463; Acts of 1923, p. 17; Acts of 1932, p. 337; Acts of 1942, chapt. 387; Acts of 1948, p. 803; Acts of 1952, Ex. Sess., chapt. 18; Acts of 1958, chapt. 33; and Acts of 1962, chapt. 638.

Since 1900 the Senate of Virginia has been reapportioned by the following acts: Acts of 1901-2, p. 800; Acts of 1922, p. 463; Acts of 1923, p. 17; Acts of 1934, p. 252; Acts of 1942, chapt. 387; Acts of 1948, p. 805; Acts of 1952, Ex. Sess., chapt. 17; Acts of 1958, chapt. 333; and Acts of 1962, chapt. 635.

Nor has the Supreme Court of Appeals of Virginia ever been reluctant to consider the issue of reapportionment. In 1884 in the case of *Wise v. Bigger*, 79 Va. 269, our Supreme Court had before it the validity of an act to apportion the representation of the State of Virginia in the Congress of the United States. However, the constitutionality of the Act was not in issue but merely the question of whether the Senate bill passed that body by a constitutional vote of two-thirds. In passing, however, the Court said at page 282 of 79 Va.:

"\* \* \* The laying off and defining the congressional districts is the exercise of a political and discretionary

power of the legislature, for which they are amenable to the people, whose representatives they are."

Again in 1932 in the case of *Brozen v. Saunders*, 159 Va. 28 our Supreme Court held invalid an Act of the 1932 General Assembly reapportioning representatives to Congress and required the electors in the State at large to select nine members to represent the State in the National Legislature. In commenting on the duty of the General Assembly to divide the State into proper districts the Court said that it was, in a sense, political and that necessarily wide discretion is given to the legislative body. The principle of practical equality of representation was alluded to. At page 43 and 44 of 159 Va., Justice Hudgins (later to become Chief Justice) stated:

"Mathematical exactness, either in compactness of territory or in equality of population, cannot be attained, nor was it contemplated in the provisions of Section 55. The discretion to be exercised should be an honest and fair discretion, the result revealing an attempt, in good faith, to be governed by the limitations enumerated in the fundamental law of the land. No small or trivial deviation from equality of population would justify or warrant an application to a court for redress. It must be a grave, palpable and unreasonable deviation from the principles fixed by the Constitution. No exact dividing line can be drawn."

The above standards of approach may well be the proper ones, or a better approach to the more recent standard of "invidious discrimination" as applied in the three-Judge federal Court in *Sanders v. Gray* (Ga. 1962) 203 F.S. 156, where at page 168 it adopted the definition of invidious as contained in Webster's International Dictionary:

"1. Tending to excite odium, ill will, or envy; likely to give offense, esp. unjustly and irritatingly discriminating; as invidious distinctions."

In accordance with the basic rules of constitutional law underlying court review of legislation assailed as unconstitutional there has always been a presumption in favor of a legislative classification and of the reasonableness and fairness of legislative action to the extent that if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. Further, the burden of establishing the unconstitutionality of a statute rests on him who assails it. Text authorities recognize this. 12 Am. Jur. 214, Section 521. The above principles have been long recognized in the Virginia law. See *Dean v. Paolicelli*, 194 Va. 219, 227, citing numerous other Virginia authorities. The Supreme Court of the United States has many recent pronouncements agreeing with the above principle, namely, *McGowan v. Maryland*, 366 U. S. 420, 425; *MacDougall v. Green*, 335 U. S. 281; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584, and the same principles have been applied in reapportionment cases both in the Federal and State Courts. See *Baker v. Carr*, supra (Justice Stewart's concurring opinion at page 265 of 369 U. S.); *Maryland Committee etc. v. Tawes*, 180 A. (2d) 656, 668; *Jackman v. Bodine*, 188 A. (2d) 642, 647.

Since *Baker v. Carr*, supra, both State and Federal Courts have had occasion to consider cases alleging reapportionment or redistricting systems were unconstitutional.

One large group of cases holding reapportionment acts unconstitutional will now be summarized by style of case, citation, population variance ratio, p.v.r., in both House and Senate and characterization by each Court of the particular reapportionment.

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Case	p.v.r. House	p.v.r. Senate	Characterization by Court
<i>Sims v. Frink</i> (Ala.) 208 F. S. 431	15-1	20-1	
<i>Lisco v. McNichols</i> (Col.) 208 F. S. 471	8-1	7-1	gross & glaring disparities
<i>Sincock v. Duffy</i> (Del.) Decided Apr. 17, 1963	35-1	21-1	disparities of a startling nature
<i>Toombs v. Fortson</i> (Ga.) 205 F. S. 248	98-1	40-1	great & gross disparities, discrimination so excessive as to be invidious
<i>Harris v. Shanahan</i> Dist. Ct., Shawnee Co. Kansas, No. 90976	8-1	19-1	
<i>Davis v. Synhorst</i> (Iowa) F. S. May 3, 1963	18-1	9-1	severe inequalities
<i>Scholle v. Hare</i> (Mich.) 367 Mich. 176, 116 N. W. (2d) 350		12-1	
<i>Moss v. Burkhart</i> (Okla.) 207 F. S. 885	14-1	26-1	grossly and egregiously disproportionate ratios
<i>Sweeney v. Notte</i> (R.I.) 183 A. (2d) 296	22-1		grossly unequal and sharply disproportionate representation
<i>Mikell v. Rousseau</i> (Vt.) 183 A. (2d) 817		6-1	
<i>Thigpen v. Meyers</i> (Wash.) 211 F. S. 826	4.65-1	7.25-1	

Another large group of cases holding reapportionment acts constitutional, usually *on their merits*, will now be summarized by style of case, citation, population variance ratio, p.v.r., in both House and Senate and characterization by each Court of the particular reapportionment.

Case	p.v.r. House	p.v.r. Senate	Characterization by Court
<i>Sobel v. Adams</i> (Fla.) 208 F. S. 316	2 $\sqrt{7}$ -1	62.4-1	- - -
<i>Caesar v. Williams</i> (Idaho) 371 P. (2d) 241	18-1	- - -	- - -
<i>Maryland Committee etc v. Tawes</i> (Maryland) 184 A. (2d) 715	5-1	32-1	- - -
<i>Jackman v. Bodine</i> (N.J.) 188 A. (2d) 642	- - -	19-1	- - -
<i>W.M.C.A. Inc. v. Simon</i> (N.Y.) 208 F. S. 368	14.7-1	3.96-1	- - -
<i>Nolan v. Rhodes</i> (Ohio) ..... F. S. ....	- - -	- - -	- - -

The population variance ratios of the above analyzed cases should be kept in mind in considering the evidence in the instant case which will show that in Virginia the population variance ratio with respect to the House of Delegates is 4.36 to 1 and the same ratio with respect to the Senate is 2.65 to 1, which ratios rank Virginia as the eighth best of all the fifty states in the United States and well within the population variance ratio of 4.4 to 1 in the Electoral College.

Since the gravamen of plaintiffs' claim of the unconsti-

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tutionality of the Virginia statutes and the plaintiffs' proof is predicated almost exclusively upon a numerical disparity of population; we should next examine those cases other than those already cited from Virginia to determine what legal principles and criteria exist.

*MacDougall v. Green*, supra, which was quoted with approval in *Baker v. Carr*, supra, contained the following language:

*"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States." (Italics supplied).*

In *Baker v. Carr*, supra, at pages 244, 245, 256 and 260 the United States Supreme Court made reference to the following:

*"The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' . . . Universal equality is not the test; there is room for weighting.*

\* \* \*

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*"No one . . . contends that mathematical equality among voters is required by the Equal Protection Clause.*

\* \* \*

*"Moreover, there is no requirement that any plan have mathematical exactness in its application. Only where, . . . the total picture reveals incommensurables of both magnitude and frequency can it be said that there is present an invidious discrimination." (Italics supplied)*

In *W.M.C.A., Inc. v. Simon* (N.Y.) *supra*, at pages 384-385 the federal District Court in noting that there were other criteria for apportioning besides population quoted the following with approval from *Baker v. Carr*: . .

*"Nothing in the federal constitution [stops] a State from choosing a legislative structure it thinks is best suited to the interests, temper, and customs of its people. . ." (Italics supplied).*

In *Sobel v. Adams* (Fla.) *supra*, the three-Judge federal District Court at page 321 stated the following:

*"It is our considered view that the rationality of a legislative apportionment may include a number of factors in addition to population." (Italics supplied).*

In *Thigpen v. Meyers*, 211 F. S. 829, the Court recognized the following factors:

*"Population is one of several important factors in apportionment. The varying interests of an area, including economic elements of topography, geography, means of transportation and industrial, agricultural and resort activities, together with numerous other regional characteristics, are to be considered. . ." (Italics supplied).*

In *Mann v. Davis* (Va.) 213 F. S. 577, 584, considerations other than population were quoted in the following language:

"While predominant, population is not in our opinion the sole or definitive measure of districts when taken by the Equal Protection Clause. *Compactness and contiguity of the territory, community of interests of the people, observance of natural lines, and conformity to historical divisions, such as county lines, for example, are all to be noticed in assaying the justness of the apportionment.*" (Italics supplied).

The plaintiffs' evidence consisted of the deposition taken August 28, 1962, of Ralph Eisenberg and plaintiffs' Exhibits 1 through 18 received by stipulation at the trial on June 5, 1963, and the testimony of Colonel James W. Roberts (Record pages 18 through 25). Dr. Eisenberg was primarily concerned with a districting arrangement which most nearly approximated an ideal scheme, namely, one which would have the least amount of deviation from the ideal (population) size of districts throughout the State and hence one least concerned with the preserving of existing districts. (Deposition p. 15). However, the guiding lines given to Dr. Eisenberg from the Hoover Commission had included use of counties and cities as basic units for representation, the non-division of counties and cities in constructing districts, economic and cultural interests, compactness, and contiguous districts. (Deposition page 8 and 9). Plaintiffs' exhibit No. 1 introduced through Dr. Eisenberg revealed that the Dauer and Kelsay study had revealed that Virginia's 1952 Apportionment Act displayed a high degree of representativeness measured by their standards and ranked Virginia sixth highest among the States in the percentages necessary to elect the majority in lower house and ninth

among State upper chambers. This was characterized as an impressive comparative position.

Plaintiffs' exhibit No. 2 introduced through Dr. Eisenberg who was responsible for the writing of said exhibit, recognized the virtual impossibility of achieving perfect equality in construction of legislative districts, qualified the term "as nearly as practicable" as not completely meaningful, stated that there is no simple answer to the question of how much deviation can be permitted and recognized the following standards in addition to population: compactness, contiguity, natural geographic or topographical features (waterways, peninsulas, mountain ranges, valleys), community of interests, and integrity for boundaries of counties and cities.

Plaintiffs' exhibit No. 12 is a report of the (Hoover) Commission on Redistricting. At pages 6, 7, 8 and 18 of this exhibit there are listed the principles of redistricting given consideration by said Commission. At the bottom of page 7 of said exhibit the following is recognized:

"The Constitution does not lay down specific requirements as to factors to be observed in redistricting the General Assembly. We have attempted to keep in mind in our plan the factors of compactness, contiguity, ease of access and communication, community of interest, and a reasonable degree of equality of representation. The map of Virginia and bare population data for the counties and cities, important as they are, do not indicate the other features which must be considered. We have endeavored to give due consideration to all factors in presenting the plans set out below.

"It must be remembered that occasionally a district which may be under-represented in the House of Delegates may be over-represented in the Senate. Hence, the combined representation of the House and Senate

should be considered in determining the extent of over or under-representation in the area."

The defendants' evidence considered of testimony of Mrs. Leslie Curdts (Assistant General Registrar of the City of Norfolk), John L. Lancaster (Research Associate with the Bureau of Population and Economic Research at the University of Virginia), Dr. L. A. Thompson (Director of the Bureau of Population and Economic Research at the University of Virginia) and the defendants' exhibits 1 through 17.

Exhibit No. 7, the annual report of the Virginia ABC Board shows at page 48 the number of incorporated towns located in the various counties of Virginia. Defendants' exhibits No. 11 and 12 show the rank order of Virginia in comparison with other states based upon population before and after the 1962 reapportionment statutes indicating Virginia ranks eighth in the United States subsequent to the 1962 Reapportionment Act. Defendants' exhibits 13 through 16 compare the rural and urban representation in the Senate and House of Delegates of Virginia, indicating almost perfect balance between rural and urban areas.

Without even considering the position of the defendants that the military population should be excluded from the official 1960 census figures it is the opinion of this Court, and it so finds, that the evidence in this case viewed in the light of the legal principles heretofore stated clearly shows that an honest and fair discretion was exercised in good faith by the General Assembly in enacting Sections 24-12 and 24-14 of the Code of Virginia. It is the further opinion of this Court, and it further finds, that the population variance ratio of 4.36 to 1 in the House and 2.65 to 1 in the Senate, while not perfect, is in every way reasonable and is a far cry from invidious discrimination in the light of the afore-

mentioned legal and factual criteria for reapportionment. It follows therefore that Sections 24-12 and 24-14 of the Code of Virginia of 1950, as amended in 1962, do not violate either Section 43 of the Constitution of Virginia or the Fourteenth Amendment of the United States Constitution. Accordingly, the plaintiffs' prayer for injunctive relief is denied and the prayer of the cross bill filed by the defendants is granted.

Although it is in no way vital to the decision already reached in this case, it is the view of this Court that the defendants' position with regard to the deduction of the military related population from the official 1960 census figures was a justifiable approach by the 1962 General Assembly in the reapportionment of the State.

Section 24 of the Virginia Constitution which has direct bearing on this matter reads as follows:

"Who not deemed to have gained legal residence.—No officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to the right of suffrage, in the State, or in any county, city, or town thereof by reason of being stationed therein; nor shall an inmate of any charitable institution or a student in any institution of learning, be regarded as having either gained or lost a residence, as to the right of suffrage, by reason of his location or sojourn in such institution."

The lack of activity of the military personnel in registering in the Norfolk area is covered by defendants' exhibit No. 1 and indicates the most minute percentage of registration by service personnel. Defendants' exhibit No. 5, Table No. 5, indicates that the military related population in Norfolk is slightly in excess of 100,000 or 32.85 per cent of the total population. With respect to Arlington it is in excess of

32,500 or 19.90 per cent of the total population. In Fairfax the figures are in excess of 49,000 or 18.85 per cent of the total population. It is quite obvious from the aforementioned figures that the deduction of the military related population substantially reduces the population variance ratio under consideration, particularly in the Norfolk area.

Counsel for the plaintiffs endeavors to refute the State's position as to the propriety of deducting military related population by calling on his excellent knowledge of historical documents. However, a careful analysis of citations furnished in his Reply Brief gives every indication that *voter* representation is intended by these authorities. For instance, he cites *Gray v. Sanders* (1963) 83 S. Ct. 801 at page 808 where it is stated in part:

"\* \* \* The idea that every *voter* is equal to *every other voter* in his state, when he casts his ballot in favor of one of *several competing candidates*, underlies many of our decisions." (Italics supplied).

It is obvious therefore that at all times a valid distinction can be made between voter representation of a stable area and population figures taken at a census to show pure population totals where the latter may encompass a marked percentage of shifting military related personnel which do not vote in the area.

Thus, adjusting its population figures to exclude military related population reveals that Norfolk has approximately 34,000 persons per Delegate and approximately 102,000 persons per Senator, compared to the "ideal representation" (by population) figures of approximately 36,000 and 90,000 respectively. Furthermore, the proper index figures for Norfolk are 1.06 for the House and .89 for the Senate, rather than 0.73 for the House and 0.61 for the Senate as

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indicated by plaintiffs' exhibit No. 18. The above adjusted figures show that Norfolk is well within the abstract 25 percent tolerance suggested by the plaintiffs' witness Dr. Eisenberg.

It follows, and the Court so finds, that such a reapportionment does not constitute invidious discrimination and is in no way violative of plaintiffs' rights.

Counsel are requested to prepare, endorse and present an order in conformity with the views expressed herein.

Very truly yours,

(s) Edmund W. Hening, Jr.  
Edmund W. Hening, Jr.  
Judge

EWHJr:ft

APPENDIX II

IN THE CIRCUIT COURT OF THE  
CITY OF RICHMOND VIRGINIA

October 11, 1963

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In Chancery

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N. P. TYLER, ET AL.,

*Plaintiffs,*

v.

LEVIN NOCK DAVIS, ET AL.,

*Defendants.*

**FINAL ORDER**

This cause came on to be heard upon the plaintiffs' bill of complaint for injunction, the answer and cross-bill of the defendants, the plaintiffs' answer to cross-bill, the exhibits and evidence *ore tenus* and the briefs and arguments of counsel for the parties.

Upon a consideration of all of which, the Court, having found the facts and reached the conclusions of law set forth in its letter-opinion of September 19, 1963, a copy of which has been filed and is herewith made a part of the record in this case, and being of opinion that Sections 24-12 and 24-14 of the Code of Virginia (1950), as amended, reapportioning the House of Delegates and Senate of the General Assembly of Virginia, are not violative of Section 43 of the Constitution of Virginia or the Fourteenth Amendment to the Constitution of the United States, it is

— ADJUDGED, ORDERED and DECREED that the plaintiffs' prayer for injunctive relief be, and the same hereby is, denied and that the prayer of the cross-bill of the defendants for a declaratory judgment that the above-mentioned statutes are valid enactments of the General Assembly of Virginia which effect no invidious discrimination against the plaintiffs and the class they represent and infringe no rights secured to them and the class they represent by the Constitution of Virginia or the Constitution of the United States be, and the same hereby is, granted, to all of which plaintiffs object and note their exception.

A copy,

Teste: Luther Libby, Jr., Clerk, D.C.  
by /s/ E. M. Edwards

APPENDIX III

DEFENDANTS' EXHIBIT No. 1

1959

Total No. Registered in City of Norfolk as of December 31, 1959 .....	78,010
No. Voters Registering from November Election Until December 31, 1959 .....	64
No. Servicemen .....	0

1960

Total No. Registered in City of Norfolk as of December 31, 1960 .....	82,826
No. Voters Registering During 1960 (Presidential Election Year) .....	6,678
No. Servicemen .....	39

1961

Total No. Registered in City of Norfolk as of December 31, 1961 .....	80,766
No. Voters Registering During 1961 .....	1,637
No. Servicemen .....	10

1962

Total No. Registered in City of Norfolk as of December 31, 1962 .....	70,046
No. Voters Registering During 1962 .....	628
No. Servicemen .....	13

1963

Total No. Registered in City of Norfolk as of April 1, 1963 .....	63,923
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No. Voters Registering Until June 1, 1963 ..... 1,044

No. Servicemen " " " " 7.

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No. Servicemen Voting by Affidavit

November 4, 1958 — 10

November 18, 1958 — 61

June 14, 1960 — 3

APPENDIX IV

DIRECT EXAMINATION

Q Dr. Thompson, would you state your name and your place of residence, please, sir?

A Loring A. Thompson. I live in Charlottesville, Virginia.

Q What is your profession, Doctor?

A I am Director of the Bureau of Population and Economic Research at the University of Virginia and Professor of Business Administration in the Graduate School of Business.

\* \* \*

Q Have you also had occasion to extract from Defendant's Exhibit Number 3 certain tables relating to the characteristics of populations for selected area in Virginia?

A Yes.

Q Doctor, I hand you a document and ask you if that is the results of that compilation?

A That is right.

MR. McILWAINE: May it please the Court, I should like to introduce this as Defendants' Exhibit Number 6.

\* \* \*

THE COURT: Defendants' Exhibit 6.

Note: Defendants' Exhibit No. 6 was marked and filed with the Court.

Q (By Mr. McIlwaine) Doctor, would you tell us what this exhibit indicates and the source from which it was drawn?

A This material was prepared from what I think you call Exhibit 3.

Q Yes, sir.

A The PC(1) C48 Tables 32 and 35. And what I was interested in looking at there in these arrangements was the percentage of a population in 1960 that moved into its house after 1958 and the percentage of people in each subdivision that were residing—the percentage of people in each area who were living in the State in which they were born.

The first column across gives the state, which means for the state as a whole that 26.9 percent of the population of Virginia in 1960 had moved into the house they were living in on April 1, 1960 after 1958. And that of all the persons living in Virginia in 1960 there were 69.2 percent that were born in Virginia.

Now, in the metropolitan areas of the State—we used Lynchburg, Richmond, and Roanoke, and then used Arlington County, Fairfax County, Falls Church, the Norfolk and the urban fringe around Washington, D. C. And the percentages of persons moving into the house after 1958 is shown in each case. In Lynchburg, Richmond and Roanoke, the percentages are 23.5, 24.8 and 24.8 respectively.

In the list of Arlington, Fairfax, Falls Church, the City of Norfolk, and the urban fringe around Washington, the percentages except in Falls Church run 33.6 for Arlington, 33.6 for Fairfax, 37.6 for Norfolk, and around the urban fringe of Washington, D. C., it was 30.4. Falls Church is 25.5.

Now, that, to me, indicates—or to me that reflects the increased mobility of the populations in these areas with heavy defense concentrations. This, of course, is about what you would expect, because these people are transferred, and they move around. But there is a substantial difference in the stability of the population of the metropolitan areas in which the number of defense establishments is small and those in which it is relatively large.

Q Is that observation borne out also by the data in the second column?

A Yes, I think it is pretty well borne out by the data in the second column.

In the Lynchburg metropolitan area there are 86.2 percent of the people in that area that were born in Virginia. In Richmond, there were 74.6. In Roanoke 79.5. Now, in these areas of defense impaction like Arlington, there are 26.9. Fairfax, 35.3. Falls Church, 32.6. Norfolk, 46.0. And the urban fringe around Washington, 28.9.

\* \* \*

Q So that for the metropolitan areas which you have listed here as Lynchburg, Richmond, and Roanoke, the figures which we have just adduced show that in those areas approximately 25 percent of the population moved into its present house in the year 1959-1960?

A That is right.

Q The same evidence which we have just adduced shows that for Arlington, Fairfax and Norfolk, some  $33\frac{1}{3}$  percent of the population had moved into its present house during the year 1959 and 1960?

A That is correct.

Q And this is a percentage increase or rate of turnover, is it, Doctor?

A Yes. It is a rate of turnover. It indicates the relative stability of your areas.

Q Are these figures used by members of the profession, Doctor, to show—are they relied upon to show stability and mobility relatively in various areas?

A That is right.

Q And on the basis of the figures we have adduced, Doctor, there is a greater rate of turnover in Arlington, Fairfax and Norfolk than there is in Lynchburg, Richmond and Roanoke?

A That is right.

Q And the rate of difference is some 40 to 50 percent?

A Yes. The difference would be probably around 40 percent higher turnover in these defense areas than in the other more stable and established areas.

Q And this evidence which we have just adduced from the Defendants' Exhibit 3 is consistent with the results as defined by you from Defendants' Exhibit 6?

A That is right.

Q Are these figures, Doctor, consistent with the figures adduced in Defendants' Exhibit 1 relating to the number of service men registered to vote in the City of Norfolk for the particular areas given. I believe you have a copy of Defendants' Exhibit 1?

A Yes.

I think it is reasonable to infer that the high mobility among the service people would result in a relatively small registration among them for voting in the local areas.